DE REPVBLICA ANGLORVM.

The maner of Gouernement or policie of the Realme of England, compiled by the Honorable Sir Thomas Smyth Knight, Doctor of both the lawes, and one of the principal Secretaries vnto the two most worthy Princes, King Edward the sixt, and Queene Elizabeth.

Seene and allowed.

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TO conceale the graces inſpired by God, or the giftes ingraffed by nature, or the vertues atchiued vnto ourſelues by induſtrie, in all ages and of all wiſe men was accounted vnduetifulneſſe, vnkindneſſe & impietie vnto that common wealth, in the which, and vnto the which we are both bred and borne: but to ſuppreſſe the worthie works of any author, may iuſtly be iudged not only iniurie to the perſon, but euen enuie at the whole world. VVherefore chauncing vpon this ſhort diſcourſe compiled by the honorable knight ſir Thomas Smyth, and conſidering that the ſame could not but be a great light vnto the ignorant, & no leſſe delight vnto the learned in the lawes and policie of ſundrie regiments: I thought it part of my dutie, aſwel for reuiuing of the fame of ſo notable a man, as for the publike imparting of ſo pythie a treatiſe, to preſent the ſame vnto thy indifferent and diſcreete iudgement. VVherein although the errors & raſhnes of Scribes, appearing in the contrarietie & corruption of cop-

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pies, happening both by the length of time ſithens the firſt making, as alſo by the often tranſcripting might iuſtly haue been mine excuſe or rather diſcourage: yet weying the authoritie of the author togither with the grauitie of the matter, I made no doubt but that the reuerence due vnto the one, & the recompence deſerued by the other would eaſily counteruail all faults committed by a clarke & writer. And whereas ſome termes or other matters may ſeme to diſſent from the vſual phraſe of the cõmon lawes of this realme: notwithſtanding to him that will conſider that the profeſſion of the maker was principally in the ciuil lawes, and therefore not to be expected as one excellent in both, & alſo that the finiſhing of this worke was in Fraunce farre from his librarie, and in an ambaſſad euen in the midſt of waightie affaires; it cannot nor ought not without great ingratitude be diſpleſant or in any ſort diſliking. VVherefore (gentle Reader) accept in good part my zeale and this honorable mans trauaile: aſſuring thy ſelf that the ſame framed by an expert workemaiſter, and forged of pure and excellent mettall, will not faile in prooving to be a right commodious inſtrument.

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FINIS.

FINIS.

DE REPVBLICA ANGLORVM.

The maner of gouernement or policie of the REALME of ENGLANDE.

Of the diuersities of common wealthes or gouernement.

CHAP. I.

THey that haue written heretofore of Common wealthes, haue brought them into three most simple and special kindes or fashions of gouernment. The first wher one alone doth gouerne, is called of the Greeks Μοναρχία the second, wher the smaller number, cõmonly called of them Ἀριστοκρατία, and the thirde where the multitude doth rule Δημοκρατία. To rule, is vnderstode to haue the highest and supreme authoritie of commaundement. That part or member of the comon wealth is saide to rule which doth controwle, correct, and direct all other members of the common wealth. That part which doth rule, define and command accordyng to the forme of the gouernement, is taken in euerie common wealth to be iust and lawe: As a rule is alway to be vnderstode to be straight, and to which all workes be to be conformed,

Monarchia. *Aristocratia.* *Democratia.*

med, and by it to be iudged: I do not meane the Lesbians rule which is conformed to the stone; but the right rule whereby the Artificer and the Architect doe iudge the straightnesse of euerie mans worke, he to be reckoned to make his worke perfectest, who goeth nerest to the straightnesse.

What is iust or Lawe in euerie common wealth or gouernement.

Chap. 2.

NOwe it doth appeare, that it is profitable to euerie common wealth (as it is to euery thing generally and particularly) to be kept in her most perfect estate. Then if that part which doth beare the rule, doe commaund that which is profitable to it, and the commandement of that part which doth rule on that sort, is to be accepted in euery common wealth respectiuely to be iust (as we haue said before): it must needes folow, that the definition which Thrasimachus did make, that to be iust which is the profit of the ruling and most strong part (if it be meant of the Citie or common wealth) is not so farre out of the way, (if it be diuillie vnderstoode (as Plato would make it. But as there is profitable and likelihoode of profite, so there is right and likelyhoode of right. And aswell may the ruling and soueraigne part commaunde that which is not his profite, as the iust man may offend (notwithstanding his iust and true meaning) when he would amend that which is amisse, and helpe the common wealth, and doe good vnto it. For in asmuch as he attempteth to doe contrarie to the Lawe which is alreadie put, he therefore by the lawe is iustly to be condemned, because his doing is contrarie to the lawe and the ordinance of that part which doth commaunde.

Iust.

An

An other diuision of common wealthes.

Chap. 3.

But this matter yet taketh an other doubt: for of these maner of rulinges by one, by the fewer part, & by the multitude or greater number, they which haue more methodically & more distinctly & perfectly written vpon them, doe make a subdiuision: and diuiding eth into two, make the one good and iust, and the other euil and vniust: as, where one ruleth, the one they cal a king or βασιλεὺς, the other τύραννος a tyrant: where the fewer number, the one they name a gouerning of the best men ἀριστοκρατία, or *Reip. optimatum*, the other of the vsurping of a few Gentlemen, or a few of the richer & stronger sort ὀλιγαρχία, or *Paucorum potestatem*: and where the multitude doth gouerne, the one they call a common wealth by the generall name πολιτεία, or the rule of the people δημοκρατία, the other the rule or the vsurping of the popular or rascall and viler sort, because they be mo in number ὀχλοκρατία κακονομία.

Example of chaunges in the maner of Gouernement.

Chap. 4.

In common wealthes which haue had long continuance, the diuersities of times haue made all these maners of ruling or gouernment to be seene: As in Rome: kinges, Romulus, Numa, Seruius, tyrantes, Tarquinius, Sylla, Cæsar: the rule of best men, as in times when the first Consuls were: and the vsurping of a few, as of the Senators after the death of Tarquinius, and before the institution of the Tribunate, and manifestly in the *Decemuirate*, but more perniciously in the *Triumuirate* of Cæsar, Crassus, and Pompeius: and afterwarde in the *Triumuirate* of Octauius, Antonius, and Lepidus: The common wealth and rule of the people, as in the expul-

sing of the decemuiri and long after, especially after the law was made, either by Horatius, or (as some would haue it) Hortentius, *quod plebs scisuerit, id populum teneat:* And the ruling and vsurping of the popular and rascal, as a litle before Sylla his reigne, & a litle before Caius Cęsars reigne. For ẏ vsurping of the rascality cā neuer long indure, but necessarily bredeth, & quickly bringeth forth a tyrant. Of this, hath Athens, Syracuse, Lacedemon and other olde auncient ruling Cities had experience, and a man nede not doubt but that other cōmon wealthes haue followed the same rate. For the nature of man is neuer to stand stil in one maner of estate, but to grow from the lesse to the more, and decay from the more againe to the lesse, till it come to the fatal end and destruction, with many turnes and turmoyles of sickenesse & recouering, seldome standing in a perfect health, neither of a mans bodie it selfe, nor of the politike bodie which is campact of the same.

Of the question what is right and iust in euerie common wealth.

Chap. 5.

SO when the common wealth is euill gouerned by an euill ruler and vniust (as in the three last named which be rather a sickenes of ẏ politike body than perfect and good estates) if the lawes be made, as most like they be alwaies to maintaine that estate: the question remaineth whether the obedience of them be iust, and the disobedience wrong: the profit and conseruation of that estate right & iustice, or the dissolution: and whether a good and vpright man, and louer of his countrie ought to maintaine and obey them, or to seke by all meanes to abolish thē, which great & hautie courages haue often attempted: as Dion to rise vp against Dionysius, Thrasibulus against the xxx. tyrants, Brutus and Cassius

Cassius against Cæsar, which hath bin cause of many commotions in common wealthes, whereof the iudgement of the common people is according to the euent and successe: of them which be learned, according to the purpose of the doers, & the estate of the time then present. Certaine it is that it is alwayes a doubtfull and hasardous matter to meddle with the chaunging of the lawes and gouernement, or to disobey the orders of the rule or gouernment, which a man doth finde already established.

That common wealthes or gouernements are not most commonly simple but mixt.

Chap. 6.

NOw although the gouernements of common wealthes be thus diuided into three, and cutting ech into two, so into fiue: yet you must not take that ye shall finde any common wealth or gouernemnt simple, pure and absolute in his sort & kinde, but as wise men haue diuided for vnderstandings sake and fantasied iiij. simple bodies which they call elementes, as fire, ayre, water, earth, and in a mans bodie foure complexions or temperatures, as cholericke, sanguine, phlegmatique, and melancolique: not that ye shall finde the one vtterly perfect without mixtion of the other, for that nature almost will not suffer, but vnderstanding doth discerne ech nature as in his sincerite: so seldome or neuer shal you finde common wealthes or gouernement which is absolutely and sincerely made of any of them aboue named, but alwayes mixed with an other, and hath the name of that which is more and ouerruleth the other alwayes or for the most part.

The definition of a king and of a tyrant.

Chap. 7.

WHere one person beareth the rule they define that to be the estate of a king, who by succession or election commeth with the good will of the people to that gouernment, and doth administer the common wealth by the lawes of the same and by equitie, and doth seeke the profit of the people as much as his owne. A tyrant they name him, who by force commeth to the monarchy against the will of the people, breaketh lawes alreadie made at his pleasure, maketh other without the aduise and consent of the people, and regardeth not the wealth of his communes but the aduancement of himselfe, his faction, & kindred. These definitions do containe three differences: the obtaining of the authoritie, the maner of administration thereof, & the butte or marke whereunto it doth tend and shoote. So as one may be a tyrant by his entrie and getting of the gouernement, & a king in the administration thereof. As a man may thinke of Octauius and peraduenture of Sylla. For they both cõming by tiranny and violence to that state, did seeme to trauaile verie much for the better order of the common wealth, howbeit either of them after a diuerse maner. An other may be a king by entrie, & a tyrant by administration, as Nero, Domitian, and Commodus; for the empire came to them by succession, but their administration was vtterly tyrannicall, of Nero after fiue yeares, of Domitian and Commodus very shortly vpon their new honour. Some both in the comming to their Empire, and in the butte which they shoote at, be kings, but the maner of their ruling is tyrannicall: as many Emperors after Cæsar and Octauius, and many Popes of Rome. The Emperours claime this tyrannicall power by pretence of that Rogation or *plebiscitum*, which Caius Cæsar or Octauius obtained, by which al the people

Rex.

Tyrannus.

ple of Rome did conferre their power and authoritie vnto Cæsar wholly.

The Pope groundeth his from Christ (*cui omnis potestas data est in cœlo & in terra*) whose successor he pretendeth to be: yet the generall Councels make a strife with him, to make the Popes power either *Aristocratian* or at the least *legitimum regnum*, & would faine bridle that *absolutam potestatem*. Some men doe iudge the same of the kings of Fraunce, and certaine Princes of Italie and other places, because they make & abrogate lawes and edicts, lay on tributes & impositions of their owne will, or by the priuate Counsell and aduise of their friends and fauorites onely, without the consent of the people. The people I call that which the word *populus* doth signifie, the whole body and the three estates of the common wealth: and they blame Lewes the xj. for bringing the administration royall of Fraunce, from the lawful and regulate raigne, to the absolute and tyrannicall power and gouernement. He himselfe was wont to glory & say, he had brought the crowne of Fraunce hors de page, as one would say out of Wardship.

Of the absolute King.

Chap. 8.

Other doe call that kinde of administration which the Greekes do call, δυναστειαν, not tyrannie, but the absolute power of a King, which they would pretende that euerie King hath, if he would vse the same. The other they call βασιλειαν νομικην or the Royall power regulate by lawes: of this I will not dispute at this time. But as such absolute administration in time of warre when all is in armes, and when lawes hold their peace because they cannot be heard, is most necessarie: so in time of peace, the same is verie daungerous, aswell to him that doth vse it, and much more to the people vpon

whom it is vsed: whereof the cause is the frailtie of mans nature, which (as Plato saith) cannot abide or beare long that absolute and vncontrowled authoritie, without swelling into too much pride and insolencie. And therefore the Romanes did wisely, who would not suffer any man to keepe the Dictatorship aboue fiue monethes, because the Dictators (for that time) had this absolute power, which some Grækes named a lawfull tyrannie for a time. As I remember, Aristotle, (who of all writers hath most absolutely & methodically treated of the diuision and natures of common wealthes) maketh this sort of gouernmēt to be one kind of kings. But all commeth to one effect: for at the first, all Kings ruled absolutely, as they who were either the heades & most ancient of their families, derived out of their own bodies, as Adam, Noa, Abraham, Iacob, Esau, reigning absolutely ouer their owne children and bondmen as reason was: or else in the rude world amongest barbarous & ignorant people, some one then whom God had endewed with singular wisedome to inuent things necessary for the nourishing and defence of the multitude, and to administer iustice did so farre excell other, that all the rest were but beastes in comparison of him, and for that excellencie willingly had this authoritie giuen him of the multitude, and of the Gentils when he was dead & almost when he was yet liuing, was taken for a God, of others for a Prophet. Such among the Iewes were Moses, Iosua, & the other Judges, as Samuel, &c. Romulus & Numa amongest the Romanes, Lycurgus and Solon & diuerse other among the Grækes, Zamolxis among the Thracians, Mahomet among the Arabians: And this kinde of rule among the Grækes is called τύραννις, which of it selfe at the first was not a name odious: But because they who had such rule, at the first, did for the most part abuse the same, waxed insolent & proude, vniust and not regarding the common wealth,

Dictatorship.

Tyrannis.

committed

committed such actes as were horrible and odious, as killing mē without cause, abusing their wiues & daughters, taking and spoyling all mens goods at their pleasures, and were not shepheardes as they ought to be, but rather robbers & deuourers of the people, whereof some were contēners of God, as Dionysius, other while they liued like diuils, and would yet be adored & accompted for Gods, as Caius Caligula and Domitian: that kind of administration and maner also, at the first not euil, hath taken the signification & definition of the vice of the abusers, so that now both in Greeke, Latine, and English a tyrant is counted he, who is an euill king, & who hath no regard to the wealth of his people, but seeketh onely to magnifie himselfe and his, and to satisfie his vicious and cruell appetite, without respect of God, of right or of the law: because that for ỳ most part they who haue had that absolute power haue bene such.

Of the name king and thadministration of Englande.

Chap. 9.

That which we call in one syllable king, in english ỳ olde english men and the Saxons from whom our tōgue is deriued to this day calleth in two syllables cyning, which whether it cōmeth of cen or ken which betokeneth to know & vnderstād, or can, which betokeneth to be able or to haue power, I cannot tell. The participle absolute of thone we vse yet, as when we say a cūning man, *Vir prudens aut sciens*: the verbe of thother as I can do this, *possum hoc facere*. By old and auncient histories that I haue red, I do not vnderstand that our nation hath vsed any other generall authoritie in this realme neither Aristocraticall, nor Democraticall, but onely the royall and kingly maiestie which at the first was diuided into many and sundrie kinges, each absolutely

lutely reigning in his countrie, not vnder the subiectiõ of other, till by fighting thone with thother, the ouercommed alwaies falling to the augmentation of the vanquisher and ouercommer, at the last the realme of england grew into one Monarchie. Neither any one of those kinges, neither he who first had all, toke any inuestiture at the hand of thempero? of Rome o? of any other superiour o? fo?raine p?ince, but helde of God to himselfe, and by his swo?de his people and crowne, acknowledging no p?ince in earth his superiour, and so it is kept & holden at this day. Although king Iohn (by the rebellion of the nobilitie aided with the daulphin of Fraunce his power) to appease the Pope who at that time possessing the consciences of his subiectes was thẽ also his enemy and his most grieuous to?mẽt (as some histo?ies do w?ite) did resigne the crowne to his legate Pandulphus, and toke it againe from him as from the Pope by faith and homage, and a certain tribute yearly. But that act being neither app?oued by his people, no? established by act of parliament, was fo?thwith and euer sithens taken fo? nothing, either to bind the king, his successo?s o? subiectes.

What is a common wealth, and the partes thereof.

Chap. 10.

TO be better vnderstood hereafter, it is necessarie yet to make a third diuision of the common wealth by the partes thereof. A common wealth is called a society o? common doing of a multitude of frée men collected together and vnited by common acco?d & couenauntes among themselues, fo? the conseruation of themselues aswell in peace as in war. Fo? p?operly an host of men is not called a common wealth but abusiuely, because they are collected but fo? a time and fo? a fact: which done,

Respublica.

done, eche diuideth himselfe from others as they were before. And if one man had, as some of the old Romanes had (if it be true that is written) v. thousande or x. thousande bondmen whom he ruled well, though they dwelled all in one citie, or were distributed into diuerse villages, yet that were no cõmon wealth: for the bondman hath no communion with his master, the wealth of the Lord is only sought for, and not the profit of the slaue or bondman. For as they who write of these thinges haue defined, a bondman or a slaue is as it were (sauing life & humane reason) but the instrument of his Lord, as the axe, the saw, the chessell and gowge is of the charpenter. Truth it is the charpenter loketh diligently to saue, correct and amend all these: but it is for his own profit, and in consideration of himselfe, not for the instruments sake. And as these be instruments of the charpenter, so the plow, the cart, the horse, ore or asse, be instrumentes of the husbandman: and though one husbandman had a great number of all those and loked well to them, it made no common wealth nor could not so be called. For the priuate wealth of the husbandman is onely regarded, and there is no mutuall societie or portion, no law or pleading betweene thone and thother. And (as he sayth) what reason hath the pot to say to the potter, why madest thou me thus? or why dost thou breake me after thou hast made me? euen so is the bondman or slaue which is bought for monie: for he is but a reasonable and lyuing instrument the possession of his Lorde and maister, reckoned among his goods, not otherwise admitted to the societie ciuill or common wealth, but is part of the possession and goods of his Lorde. Wherefore except there be other orders and administrations amongst the Turks, if the prince of the Turkes (as it is written of him) doe repute al other his bondmen and slaues (himselfe and his sonnes onely frẽmen) a man may doubt whether his

administration be to be accounted a common wealth or a kingdome, or rather to be reputed only as one that hath vnder him an infinite nũber of slaues or bondmẽ among whom there is no right, law nor cõmon wealth compact, but onely the will of the Lorde and segnior. Surely none of the olde Grækes would call this fashion of gouernment Remp. or πολιτεία for the reasons which I haue declared before.

The first sort or beginning of an house or familie called οἰκονομία.

Chap. II.

Then if this be a societie, and consisteth onely of frẽ men, the least part therof must be of two. The naturalest and first coniunction of two toward the making of a further societie of continuance is of the husband & of the wife after a diuerse sort each hauing care of the familie: the man to get, to trauaile abroad, to defend: the wife, to saue ỹ which is gotten, to tarrie at home to distribute that which commeth of the husbandes labor for the nurtriture of the childrẽ and family of them both, and to kẽpe all at home neat and cleane. So nature hath forged ech part to his office, the man sterne, strong, bould, aduenterous, negligent of his beautie, & spending. The women weake, fearefull, faire, curious of her bewtie, and sauing. Either of them excelling other in wit and wisedome to conduct those thinges which appertaine to their office, and therefore where their wisedome doth excel, therein it is reason that ech should gouerne. And without this societie of man, and woman, the kinde of man could not long endure. And to this societie men are so naturally borne that the prince of all Philosophers in consideration of natures was not afraide to say that a man by nature is rather desirous to fellow himselfe to another and so to liue in couple,

couple, than to adherd himselfe with many. Although of all thinges or liuing creatures a man doth shew himselfe most politike, yet can he not well liue without the societie & fellowship ciuil. He that can liue alone saith Aristotle is either a wild beast in a mans likenes, or else a god rather than a man. So in the house and familie is the first and most naturall (but priuate) apparance of one of the best kindes of a common wealth, that is called Aristocratia where a few & the best doe gouerne, and where not one alwaies: but sometime and in some thing one, & sometime and in some thing another doth beare the rule. Which to maintaine for his part God hath giuen to the man great wit, bigger strength, and more courage to compell the woman to obey by reason or force, and to the woman bewtie, faire countenaunce, and sweete words to make the man to obey her againe for loue. Thus eth obeyeth and commaundeth other, and they two together rule the house. The house I call here the man, the woman, their children, their seruauntes bonde and free, their cattell, their housholde stuffe, and all other things, which are reckoned in their possession, so long as all these remaine together in one, yet this cannot be called Aristocratia, but Metaphoricè, for it is but an house, and a litle sparke resembling as it were that gouernement. Domus seu familia.

The first and naturall beginning of a kingdome in Greeke βασιλεία.

Chap. 12.

But for so much as it is the nature of all thinges to encrease or decrease, this house thus encreasing & multiplying by generation, so that it cannot wel be cõprehended in one habitation, and the children waxing bigger, stronger, wiser, and thereupon naturally desirous to rule, the father and mother sendeth them out

in couples as it were by prouining or propagation. And the childe by mariage beginneth as it were to rote towards the making of a new stocke, and thereupon an other house or familie. So by this propagation or prouining first of one, and then another, and so from one to another in space of time, of many houses was made a stræte or village, of many strætes and villages ioyned together a citie or borough. And when many cities, boroughes and villages were by common and mutuall consent for their conseruatiõ ruled by that one and first father of them all, it was called a nation or kingdome. And this seemeth the first and most naturall beginning and source of cities, townes, nations, kingdomes, and of all ciuill societies. For so long as the great grandfather was aliue and able to rule, it was vnnaturall for any of his sonnes or offspring to striue with him for the superiority, or to go about to gouerne or any wise to dishonour him from whom he had receiued life and being. And therefore such a one doth beare the first and natural example of an absolute and perfect king. For he loued them as his owne children and nephewes, cared for them as members of his owne body, prouided for them as one hauing by long time more experience than any one or all of them. They againe honoured him as their father of whose body they came, obeyed him for his great wisedome and forecast, went to him in doubtfull cases as to an Oracle of God, feared his curse and malediction as proceeding from Gods owne mouth. He againe bled nouriture: for eche paine put vpon them, he esteemed as laide vpon himselfe.

Prouining or propagation is when a man layeth a branch of a Vine or Other, or any other tree into the ground, so that it taketh roote of it selfe & may liue though it be cut then from the first roote or stock.

Pagus.
Oppidum.
Ciuitas.

The first and naturall beginning of the rule of a few of the best men called in Greeke Αριστοκρατία.

Chap. 13.

But when that great Grandfather was dead, the sonnes of him and brethren among themselues not hauing

hauing that reuerence to any, nor confidence of wisedome in any one of them, nor that truſt thone to thother, betweene whome (as many times it fareth with brethren) ſome ſtrifes and brawlinges had before arisen: To defende themſelues yet from them which were walſh and ſtrangers, neceſſarily agreed among themſelues to conſult in common, and to beare rule for a time in order, now one, now another: ſo that no one might beare always the rule, nor any one be neglected. And by this meanes if anie one fayled during his yere or time by ignorance, the nert (being either wiſer of himſelfe, or elſe by his brothers error & fault) amended it. And in the meane while, at diuerſe and moſt times when vrgent neceſſitie did occurre, they conſulted all thoſe heads of families together within themſelues, howe to demeane and order their matters, beſt for the conſeruation of themſelues, and eche of their families, generally and particularly. Thus a fewe being heads and the chiefe of their families, equall in birth and nobilitie, and not much different in riches, gouerned their owne houſes and the deſcendentes of them particularly, & conſulted in common vpon publike cauſes, agreeing alſo vpon certaine lawes and orders to be kept amongſt them. So the beſt, chiefeſt and ſageſt did rule, and thother part had no cauſe to ſtriue with them, nor had no cauſe nor apparance to compare with anie of them, neither for age nor diſcretion, nor for riches or nobility. The rulers ſought ech to keepe and maintaine their poſteritie, as their ſonnes and nephewes, and ſuch as ſhoulde ſucceede them and carie their names when they were deade, and ſo render them being mortall by nature immortall by their fame and ſucceſſion of poſteritie: hauing moſt earneſt care to maintaine ſtill this their couſinage and common familie aſwell againſt forreine and barbarous nations, which were not of their progenie, tongue, or religion, as a-

gainſt wilde and ſauage beaſts. This ſeemeth the naturall courſe and beginning or image of that rule of the fewer number, which is called of the Græcke Ἀριστοκρατία and of the Latines optimatum reſpublica.

The firſt originall or beginning of the rule of the multitude called πολιτία or Δημοκρατία.

Chap. 14.

NOw as time bringeth an ende of all thinges, theſe brethren being all dead, and their offſpring encreaſing daily to a great multitude, and the reuerence due the old fathers in ſuch and ſo great number of equals fayling by the reaſon of the death or doting of the Elders: eche owing their merites of education apart to their fathers and grandfathers, and ſo many ariſing and ſuch equalitie among them, it was not poſſible that they ſhould be content to be gouerned by a fewe. For two things being ſuch as for the which men in ſocietie and league doe moſt ſtriue, that is honour and profite no man of frée courage can be contented to be neglected therein, ſo that they were faine of neceſſitie to come to that, that the more part ſhould beare the price away in election of magiſtrates and rulers. So that either by courſe or by lot eche man in turne might be receiued to beare rule and haue his part of the honour, and (if any were) of the profit, which came by adminiſtration of the common wealth. For whoſoeuer came of that old great grandfathers race, he accounted him ſelfe as good of birth as any other. For ſeruice to the cõmon wealth all or ſuch a number had done it, as they coulde not be accounted fewe. And if a fewe would take vpon them to vſurpe ouer the reſt, the reſt conſpiring together would ſone be maſters ouer them, and ruinate them wholly. Whereupon neceſſarily it came to paſſe that the common wealth muſt turne and alter as before from one to

to a few, so now from a few to many and the most part, ech of these yet willing to saue the politicke bodie, to conserue the authoritie of their nation, to defend themselues against all other, their strife beeing onely for empire and rule, and who should doe best for the common wealth, wherof they would haue experience made by bearing office and being magistrates. This I take for the first and naturall beginning of the rule of the multitude which the Grekes called Δημοκρατία: the Latines some *Respublica* by the generall name, some *populi potestas*, some *census potestas*, I cannot tell howe latinely.

That the common wealth or policie must be according to the nature of the people.

Chap. 15.

By this proceſſe and discourse it doth appeare that the mutations & changes of fashions of gouernement in common wealthes be naturall, & doe not alwaies come of ambitiō or malice: And that according to the nature of the people, so the cōmonwealth is to it fit and proper. And as all these iii. kindes of common wealthes are naturall, so when to ech partie or espece and kinde of the people that is applied which best agreeth like a garmēt to the bodie or shoe to the foote, then the bodie politicke is in quiet, & findeth ease, pleasure and profit. But if a contrarie forme be giuen to a cōtrary maner of people, as when the shoe is to litle or to great for the foote, it doth hurt and encomber the conuenient vse thereof, so the frée people of nature tyrannized or ruled by one against their willes, were he neuer so good, either faile of corage and were seruile, or neuer rest vntill they either destroie their king & them that would subdue them, or be destroyed themselues: And againe another sort there is which without being ruled by one Prince but set at

libertie cannot tell what they should doe, but either through insolencie, pride, and idlenes will fall to robbery and all mischiefe, and to scatter and dissolue themselues, or with folish ambition and priuate strife consume one another and bring themselues to nothing. Of both these two we haue histories enough to beare witnesse, as the Grækes, Romanes, Samnites, Danes, Vandals, and others. Yet must you not thinke, that all common wealthes, administrations and rulinges began on this sort, by prouining or propagation, as is before written, but many times after a great battle and long war the captaine who led a multitude of people, gathered peraduenture of diuerse nations & languages, liking ỳ place which he hath by force conquered, tarieth there, & beginneth a common wealth after this maner, & for the most part a kingdome. As the Gothes & Lumbardes in Italie, the Frenchmen in Gaule, the Sarasins in Spaine and part of Fraunce, the Saxons in great Brittaine, which is nowe called Englande: of which when that one and chiefe prince is dead, the nobler sort consult among themselues, and either chose an other head and king, or diuide it into more heads and rulers, so did the Lumbards in Italie, and the Saxons in England, or take at the first a common rule and popular estate, as the Zwisers did in their cantons & do yet at this day, or else admit the rule of a certaine few, excluding the multitude and communaltie, as the Paduans, Veronenses, and Venetians haue accustomed.

The diuision of the partes and persons of the common wealth.

Chap. 16.

TO make all thinges yet cleare before, as we shal go, there ariseth another diuision of the partes of the common wealth. For it is not enough to say that it consisteth

ſiſteth of a multitude of houſes & families which make ſtreets & villages, & the multitude of the ſtrétes & villages make townes, and the multitude of townes the realme. & that frémen be cõſidered only in this behalfe, as ſubiects & citizens of the cõmonwealth, & not bondmẽ who can beare no rule nor iuriſdiction ouer frémen, as they who be taken but as inſtruments & the goods and poſſeſſions of others. In which conſideration alſo we do reiect women, as thoſe whom nature hath made to kœpe home and to nourith their familie and childzen, and not to medle with matters abzoade, nor to beare office in a citie or common wealth no moze than childzen and infantes: except it be in ſuch caſes as the authozitie is annexed to the bloud and progenie, as the crowne, a dutchie, or an erledome for there the bloud is reſpected, not the age nor ỹ ſexe. Whereby an abſolute Quéne, an abſolute Dutches or Counteſſe, thoſe I call abſolute, which haue the name, not by being maried to a king, duke, or erle, but by being the true, right & next ſucceſſorz in the dignitie, and vpon whom by right of the bloud that title is deſcended: Theſe I ſay haue the ſame authozitie although they be women or childzen in that kingdome, dutchie or erledome, as they ſhoulde haue had if they had bin men of full age. For the right and honour of the bloud, and the quietnes and ſuertie of the realme, is moze to be conſidered, than either the tender age as yet impotent to rule, or the ſexe not accuſtomed (otherwiſe) to intermeddle with publicke affaires, being by common intendment vnderſtood, that ſuch perſonages neuer doe lacke the counſell of ſuch graue and diſcréte men as be able to ſupplie all other defectes. This (as I ſaide) is not enough: But the diuiſion of theſe which be participant of the common wealth is one way of them that beare office, the other of them that beare none: the firſt are called magiſtrates, the ſecond priuate men. Another the like was among the

Romanes of *Patritij & plebei*, thone striuing with thother a long time, the *patricij* many yeares excluding the *plebei* from bearing rule, vntill at last all magistrates were made cõmon betweene thẽ: yet was there another diuision of the Romanes into *senatores*, *equites* and *plebs*: the Greeks had also ἐυπατρίδας καὶ δημοτικούς. The French haue also at this day, les nobles & la populare, or gentils homes & villaines: we in England diuide our men commonly into foure sortes, gentlemen, citizens, yeomen artificers, and labourers. Of gentlemen the first and chiefe are the king, the Prince, Dukes, marquises, earles, vicountes, barrons, and these are called κατ' ἐξοχὴν the nobilitie, and all these are called Lords and noblemen: next to these be knightes, esquiers and simple gentlemen.

Of the first part of gentlemen of Englande called *Nobilitas maior*.

Chap. 17.

Dukes, marquises, erles, vicountes, and barrons, either be created by the prince or come to that honour by being the eldest sonnes, as highest and next in succession to their parentes. For the eldest of dukes sonnes during his fathers life is called an earle, an earles sonne is called by the name of a vicount, or barron, or else according as the creation is. The creation I call the first donation and condition of the honour (giuen by the prince, for good seruice done by him and aduancement that the prince will bestowe vppon him) which with the title of that honour is commonly (but not alwaies) giuen to him and to his heires, males onely: the rest of the sonnes of the nobilitie by the rigour of the lawe be but esquires, yet in common speche, all dukes and marquises sonnes, and the eldest sonne of an earle be called Lordes. The which name commonly

Eldest sonnes of dukes are not earles by birth, but Lordes, and take their place aboue earles, and so are Earles eldest sonnes in respect of barrons.

Esquires of honour or Lordes.

ly doeth agree to none of lower degree than Barons, excepting such onely, as be thereunto by some speciall office called. The Barrony or degree of Lordes doeth aunswere to the dignitie of the Senators of Rome, and the title of our nobilitie to their *patricij*: when *patricij* did betoken *Senatores aut Senatorum filios*. *Census Senatorius* was in Rome, at diuerse times diuerse, and in Englande no man is created Barron, except he may dispend of yearly reuenue, one thousand pounds or one thousand markes at the least. Vicounts, Earles, Marquises and Dukes more according to the proportion of the degree and honour, but though by chaunce he or his sonne haue lesse, he keepeth his degree: but if they decay by excesse, and be not able to maintaine the honour (as *Senatores Romani* were *amoti Senatu*) so sometimes they are not admitted to the vpper house in the Parliament, although they keepe the name of Lorde still.

Of the second sort of Gentlemē which may be called *Nobilitas minor*, and first of Knights.

Chap. 18.

NO man is a Knight by succession, not the King or prince. And the name of prince in England βασιλεὺς betokeneth the kinges eldest sonne or prince of Wales: although the King himselfe, his eldest sonne, and all Dukes be called by generall name Princes. But as in Fraunce the Kinges eldest sonne hath the title of the Daulphine, and he or the nert heire apparant to the Crowne is Monsire, so in England the Kings eldest sonne is called βασιλεὺς the Prince. Knightes therefore be not borne but made, either before the battle to encourage them the more to aduenture their liues, or after the conflict, as aduauncement for their hardinesse and manhood alreadie shewed: or out of the warre

for some great seruice done, or some good hope through the vertues which doe appeare in them. And they are made either by the king himselfe, or by his commission and royall authoritie, giuen for the same purpose, or by his lieutenaunt in the warres, who hath his royall and absolute power committed to him for that time. And that order semeth to aunswere in part to that which the Romanes called *Equites Romanos*, differing in some pointes, and agreeing in other, as their common wealth and ours do differ and agree: for neuer in all pointes one common wealth doeth agree with an other, no nor long time any one common wealth with it selfe. For al chaungeth continually to more or lesse, and still to diuerse & diuerse orders, as the diuersitie of times do present occasion, and the mutabilitie of mens wittes doeth inuent and alter newe wayes, to reforme and amende that wherein they doe finde fault. *Equites Romani* were chosen *ex censu*, that is according to their substance and riches. So be Knights in England most commonly, according to the yearely reuenue of their landes being able to maintaine that estate: yet all they that had *Equestrem censum*, *non legebantur equites*. No more are all made Knightes in Englande that may dispende a knightes land or fee, but they onely whom the king will so honour. The number of *Equites* was vncertaine, and so it is of knightes, at the pleasure of the Prince. *Equites Romani* had *equum publicum*. The Knightes of England haue not so, but finde their owne horse themselues in peace time, and most vsually in warres.

Census equester was among the Romanes at diuerse times of diuerse value: but in Englande whosoeuer may dispende of his free landes 40. l. sterling of yearely reuenue by an olde Law of Englande either at the coronation of the king, or mariage of his daughter, or at the dubbing of the Prince, Knight, or some such great occasion, may be by the king compelled to take

that

that order & honour, or to pay a fine, which many not so desirous of honour as of riches, had rather disburse. Some who for causes are not thought worthy of that honour and yet haue abilitie, neither be made knights though they would, and yet pay the fine. £l. l. sterling, at that time when this order began, maketh now Cr. l. of currant money of England: as I haue more at large declared in my booke of the diuersitie of standardes or the valor of monies.

When the Romanes did write *Senatus populusque Romanus*, they seemed to make but two orders, that is of the Senate and of the people of Rome, and so in the name of people they contained *equites* and *plebem*: so when we in England doe say the Lordes and the commons, the knights, Esquires, & other gentlemen, with citizens, burgeses & yeomen be accounted to make the commons. In ordaining of lawes the Senate of Lords of England is one house, where the Archbishoppes and Bishops also be, and the king or Queene for the time being as chiefe: the knights and all the rest of the gentlemen, citizens & burgesses which be admitted to consult vpon the greatest affaires of the Realme be in an other house by themselues, and that is called the house of the commons, as we shal more clearely describe whē we speake of the Parliament. Whereupon this word knight is deriued, and whether it doe betoken no more but that which *miles* doth in latine, which is a souldier, might be moued as a question. The word souldier now seemeth rather to come of sould and paiment, and more to betoken a waged or hyred man to fight than otherwise, yet Cæsar in his Commentaries called soldures in the tongue gallois, men who deuoted & swore themselues in a certaine band or othe one to another and to the captaine, which order if the Almains did followe, it may be that they who were not hyred but being of the nation, vpon their owne charges and for their aduaunce-

uauncement, and by such common oth or band that did followe the warres, were (possibly) κατ' ἐξοχὴν called knightes or *milites*, and nowe among the Almaines some are called lanceknights as souldiers of their band not hyred, although at this day they be for the most part hirelings. Or peraduenture it may be that they which were next about the prince as his garde or seruauntes picked or chosen men out of the rest being called in the Almaine language, knighten, which is asmuch to say as seruantes: these men being found of good seruice, the word afterward was taken for an honor, and for him who maketh profession of armes. Our language is so chaunged that I dare make no iudgement therof. Now we call him Knight in English that the French calleth cheualier, and the latine *equitem* or *equestris ordinis*.

Verè Lantzknecht, lancearius: a speareman.

Eques auratus.

And when any man is made a Knight, he knéeling downe is stroken of the Prince, with his sword naked vpon the backe or shoulder, the Prince saying: sus or sois chiualier au nom de Dieu and (in times past) they added S. George, and at his arising the Prince saith, auauncèr. This is the manner of dubbing of Knights at this present: and that terme dubbing was the olde terme in this point, and not creation. At the coronation of a King or Quéene, there be Knights of the bath made with long and more curious ceremonies: But howsoeuer one be dubbed or made a knight, his wife is by and by called a Ladie as well as a Barons wife: he himselfe is not called Lorde, but hath to his name in common appellation added this syllable, Sir, as if he before were named, Thomas, William, Iohn, or Richard, afterward he is alwayes called Sir Thomas, Sir William, Sir Iohn, Sir Richard, and that is the title which men giue to Knightes in Englande. This may suffice at this time, to declare the order of knighthoode, yet there is an other order of Knights in England which be called the Knights of the Garter. King

Sire quasi Senior.

Edward

Edward the third, after he had obtained manie notable victories, king Iohn of Fraunce, king Iames of Scotlande, being both prisoners in the tower of London at one time, and king Henrie of Castel the bastard expulsed out of his realme, and Don Petro restored vnto it by the prince of Wales and Duke of Aquitaine called the blacke prince, inuented a societie of honour, and made a choise out of his owne realme and dominions, and all Christendom: and the best and most excellent renoumed persons in vertues and honour, he did adorne with that title to be knightes of his order, gaue them a garter decked with golde, pearle and precious stones, with the buckle of gold, to weare daily on the left legge onely, a kirtle, gowne, cloke, chaperon, collar, and other august and magnificall apparell both of stuffe and fashion exquisite & heroicall, to weare at high feastes, as to so high and princely an order was meete: of which order he and his successors kinges and Quéenes of England to be the soueraigne, and the rest by certaine statutes and lawes among themselues, be taken as brethren and fellowes in that order, to the number of xxvi. But because this is rather an ornament of the realme than any policie or gouernment therof, I leaue to speake any further of it.

Of Esquiers.

Chap. 19.

Escuier or esquier (which we call commonly squire) is a French worde, and betokeneth *Scutigerum* or *Armigerum*, and be all those which beare armes (as we call them) or armories (as they terme them in French) which to beare is a testimonie of the nobilitie or race from whence they doe come. These be taken for no distinct order of the common wealth, but do goe with the residue of the gentlemen: saue that (as I take it)

they be those who beare armes, testimonies (as I haue saide) of their race, and therefore haue neither creation nor dubbing: or else they were at the first costerels or the bearers of the armes of Lordes or Knightes, and by that had their name for a dignitie and honour giuen to distinguish them from a common souldier called in latine *Gregarius miles*.

Of Gentlemen.

Chap. 20.

Gentlemen be those whom their bloud and race doth make noble and knowen, Εὐγενὶς in Greeke, the Lataines call them all *Nobiles*, as the French Nobles, Εὐγενία or *Nobilitas* in Latine is defined, honour or title giuen, for that the auncestor hath bin notable in riches or vertues, or (in fewer wordes) olde riches or prowes remaining in one stock. Which if the successors do keepe and followe, they be *verè nobiles* and Εὐγενὶς: if they doe not, yet the fame and wealth of their ancestors serue to couer thē so long as it can, as a thing once gilted though it be copper within, till the gilt be worne away. This hath his reason, for the Etimologie of the name serueth the efficacie of the worde. *Gens* in Latine betokeneth the race and firname, so the Romaines had Cornelios, Sergios, Appios, Fabios, Aemilios, Pisones, Iulios, Brutos, Valerios, of which who were Agnati, and therefore kept the name, were also Gentiles: and remaining the memorie of the glorie of their progenitors fame, were gentlemē of that or that race. This matter made a great strife among the Romanes, when those which were *Nouus homines* were more allowed, for their vertues new and newly shewen, than the olde smell of auntient race newly defaced by the cowardise and euill life of their nephewes and descendauntes could make the other to be. Thus the Cicerones, Catones, and Marij had

had much adoe with those auncients, and therefore said Iuuenalis:

Malo pater tibi sit Thersites, dummodo tu sis
Aeacidi similis vulcaniaque arma capessas,
Quàm te Thersiti similem producat Achilles.

But as other common wealthes were faine to doe, so must all princes necessarilie followe, that is, where vertue is to honour it: and although vertue of auncient race be easier to be obtained, aswell by the example of the progenitors, which encourageth, as also through habilitie of education and bringing vp, which enableth, and the lastly enraced loue of tenants & neibors to such noblemen and gentlemen, of whom they holde and by whom they doe dwell, which prieketh forward to ensue in their fathers steps. So if all this doe faile (as it were great pitie it should) yet such is the nature of all humaine thinges, and so the world is subiect to mutabilitie, that it doth many times faile: but whē it doth, the prince and common wealth haue the same power that their predecessors had, and as the husbandmā hath to plant a new trē where the olde fayleth, so hath the prince to honour vertue where he doth find it, to make gentlemen, esquiers, knights, barons, earles, marquises, & dukes, where he seeth vertue able to beare that honour or merits, and deserues it, & so it hath alwayes bin vsed among vs. But ordinarily the king doth only make knights and create barons or higher degrees: for as for gentlemen, they be made good cheape in England. For whosoeuer studieth the lawes of the realme, who studieth in the vniuersities, who professeth liberall sciences, and to be short, who can liue idly and without manuall labour, and will beare the port, charge and countenaunce of a gentleman, he shall be called master, for that is the title which men giue to esquiers and other gentlemen, and shall be taken for a gentleman: for true it is with vs as is saide, *Tanti eris*

alijs quanti tibi feceris: (and if nede be) a king of Heraulds shal also giue him for mony, armes newly made and inuented, the title whereof shall pretende to haue bene found by the sayd Herauld in perusing and viewing of olde registers, where his auncestors in times past had bin recorded to beare the same: Or if he wil do it more truely and of better faith, he will write that for the merites of that man, and certaine qualities which he doth see in him, and for sundrie noble actes which he hath performed, he by the authoritie which he hath as king of Heraldes armes, giueth to him and his heires these and these armes, which being done I thinke he may be called a squire, for he beareth euer after those armes. Such men are called sometime in scorne gentlemen of the first head.

Whether the maner of England in making gentlemen so easily is to be allowed.

Chap. 21.

A Man may make doubt & question whether this maner of making gentlemen is to be allowed or no, & for my part I am of that opinion ỹ it is not amisse. For first the prince loseth nothing by it, as he should doe if it were as in France: for the yeomen or husbandmā is no more subiect to taile or tare in Englande than the gentleman: no, in euerie payment to the king the gentleman is more charged, which he beareth the gladlier and dareth not gainesaie for to saue and kepe his honour and reputation. In any shew or muster or other particular charge of the towne where he is, he must open his purse wider and augment his portion aboue others, or else he doth diminish his reputation. As for their outward shew, a gentleman (if he wil be so accompted) must go like a gentleman, a yeoman like a yeoman, and a rascall like a rascall: and if hee be called to the

the warres, he must and will (whatsoeuer it cost him) array himselfe and arme him according to the vocation which he pretendeth: he must shewe also a more manly courage & tokens of better education, higher stomacke and bountifuller liberalitie than others, and keepe about him idle seruauntes, who shall doe nothing but waite vpon him. So that no man hath hurt by it but he himselfe, who hereby perchance will beare a bigger saile than he is able to maintaine. For as touching the policie and gouernment of the common wealth, it is not those that haue to do with it, which will magnifie themselues, and goe in higher buskins than their estate will beare: but they which are to be appointed, are persons tryed and well knowen, as shall be declared hereafter.

Of Citizens and Burgesses.

Chap. 22.

NExt to gentlemen, be appointed citizens and burgesses, such as not onely be free and receiued as officers within the cities, but also be of some substance to beare the charges. But these citizens and burgesses, be to serue the common wealth, in their cities & burrowes, or in corporate townes where they dwell. Generally in the Shires they bee of none account, saue onely in the common assembly of the Realme to make lawes, which is called the Parliament. The auncient Cities appoint iiij. and ech borough ij. to haue voices in it, and to giue their consent or dissent in the name of the citie or borough for which they be appointed.

Of Yeomen.

Chap. 23.

THose whom we call yeomen next vnto the nobilitie, Knights and Squires, haue the greatest charge and

doings in the common wealth, or rather are more trauailed to serue in it than all the rest: as shall appeare hereafter. I call him a yeoman whom our Lawes doe call *Legalem hominem*, a worde familiar in writtes and enquestes, which is a freeman borne English, and may dispend of his owne free lande in yerely reuenue to the summe of xl. s. sterling: This maketh (if the iust value were taken now to the proportion of monies) vi. l. of our currant mony at this present. This sort of people confesse themselues to be no gentlemen, but giue the honour to al which be or take vpon them to be gentlemen, and yet they haue a certaine preheminence and more estimation than labourers and artificers, and commonly liue wealthily, kéepe good houses, & do their businesse, & trauaile to acquire riches: these be (for the most part) fermors vnto gentlemen, which with grasing, frequenting of markettes, and kéeping seruaunts not idle as the gentleman doth, but such as get both their owne liuing and parte of their maisters: by these meanes doe come to such wealth, that they are able and daily doe buy the landes of vnthriftie gentlemen, and after setting their sonnes to the schole at the Universities, to the lawe of the Realme, or otherwise leauing them sufficient landes whereon they may liue without labour, doe make their saide sonnes by those meanes gentlemen. These be not called maisters, for that (as I saide) pertaineth to gentlemen onely: But to their surnames, men adde goodman: as if the surname be Luter, Finch, White, Browne, they are called, goodman Luter, goodman White, goodman Finch, goodman Browne, amongest their neighbours, I meane not in matters of importance or in lawe. But in matters of Lawe and for distinction, if one were a knight they would write him (for example sake) Sir Iohn Finch Knight, so if he be an Esquier, Iohn Finch Esquier or Gentleman, if he be no Gentleman, Iohn Finch

Finch yeoman. For amongest the Gentlemen they which claime no higher degrée, and yet be to be exempted out of the number of the lowest sort thereof, be written Esquiers. So amongest the husbandmen labourers, lowest and rascall sort of the people such as be exempted out of the number of the rascabilitie of the popular be called and written yeomen, as in the degrée next vnto gentlemen. These are they which olde Cato calleth *Aratores* and *optimos cives in Republica*: and such as of whom the writers of common wealths praise to haue manie in it. Aristoteles namely reciteth πόμα μισήτια ἄριστα: these tende their owne businesse, come not to meddle in publike matters and iudgements but when they are called, and glad when they are deliuered thereof, are obedient to the gentlemen and rulers, and in warre can abide trauaile and labour as men vsed to it, yet wishing it soone at an ende that they might come home & liue of their owne. When they are forth they fight for their Lordes of whom they hold their landes, for their wiues and children, for their countrey and nation, for praise and honour, against they come home, and to haue the loue of their Lorde and his children to be continued towardes them and their children, which haue aduentured their liues to and with him and his. These are they which in the old world gat that honour to Englande, not that either for witte, conduction, or for power they are or were euer to be compared to the gentlemen, but because they be so manie in number, so obedient at the Lordes call, so strong of bodie, so harde to endure paine, so couragious to aduenture with their Lorde or Captaine going with, or before them, for else they be not hastie nor neuer were, as making no profession of knowledge of warre. These were the good archers in times past, and the stable troupe of footemen that affraide all France, that would rather die all, than once abandon the knight or gentleman their captaine,

who at those daies commonly was their Lorde, and whose tenauntes they were, readie (besides perpetuall shame) to be in danger of vndoing of themselues, & all theirs if they should shewe any signe of cowardise or abandon the Lorde, Knight or Gentlemen of whom they helde their liuing. And this they haue amongest them from their forefathers tolde one to an other. The gentlemen of Fraunce and the yeomen of England are renowned, because in battle of horsemen Fraunce was many times too good for vs, as we againe alway for them on foote. And Gentlemen for the most part be men at armes and horsemen, and yeomen commonlie on foote: howsoeuer it was, yet the gentlemen had alwaies the conduction of the yeomen, and as their captaines were eyther a foote or vpon a litle nagge with them, and the Kinges of Englande in foughten battles remaining alwaies among the footemen, as the Frenche Kings among their horsemen. Ethe Prince therby, as a man may gesse, did shew where he thought his strength did consist. What a yeoman is I haue declared, but from whence the word is deriued it is hard to say: it cannot be thought that yeomen should be said a young man, for commonlie we doe not call any a yeoman till he be married, and haue children, and as it were haue some authoritie among his neighbours. Yonker in lowe dutch betokeneth a meane gentleman or a gay fellowe. Possible our yeomen not being so bolde as to name themselues gentlemen, when they came home, were content when they had heard by frequentation with lowe dutchmen of some small gentleman (but yet that would be counted so) to be called amongest them, yonker man, the calling so in warres by mockage or in sport thone an other, when they come home, yonker man, and so yeoman: which worde nowe signifieth among vs, a man well at ease and hauing honestlie to liue, and yet not a gentleman: whatsoeuer

Geman in the Saxon is a maried man, and hereof commeth our yeoman, for after mariage men are accounted setled members in the cõmon wealth, but not before.

A yonker commeth of young herre which is a son and heire to a gentleman or a young gentleman.

ner that worde yonker man, yonke man, or yeoman doth more or lesse signifie to the dutch men.

Of the fourth sort of men which doe not rule.

Chap. 24.

The fourth sort or classe amongest vs, is of those which the olde Romans called *capite censi proletarij* or *operæ*, day labourers, poore husbandmen, yea marchantes or retailers which haue no frée lande, copiholders, and all artificers, as Taylers, Shoomakers, Carpenters, Brickemakers, Bricklayers, Masons, &c. These haue no voice nor authoritie in our common wealth, and no account is made of them but onelie to be ruled, not to rule other, and yet they be not altogether neglected. For in cities and corporate townes for default of yeomen, enquests and Iuries are impaneled of such manner of people. And in villages they be commonly made Churchwardens, alecunners, and manie times Constables, which office toucheth more the common wealth, and at the first was not imployed vppon such lowe and base persons. Wherefore generally to speake of the common wealth, or policie of Englande, it is gouerned, administred, & manured by three sortes of persons, the Prince, Monarch, and head gouerner, which is called the King, or if the crowne fall to a woman, the Quéene absolute, as I haue héeretofore saide: In whose name and by whose authoritie all things are administred. The gentlemen, which be diuided into two partes, the Baronie or estate of Lordes conteyning barons and all that be aboue the degrée of a baron, (as I haue declared before): and those which be no Lords, as Knightes, Esquires, and simplely gentlemen. The thirde and last sort of persons is named

the yeomanrie: each of these hath his part and administration in iudgementes, corrections of defaultes, in election of offices, in appointing and collection of tributes and subsidies, or in making lawes, as shall appeare hereafter.

THE SECOND booke.

Of the Parliament and the authoritie thereof.

Chap. 1.

The most high and absolute power of the realme of Englande, consisteth in the Parliament. For as in warre where the king himselfe in person, the nobilitie, the rest of the gentilitie, and the yeomanrie are, is ỳ force and power of Englande: so in peace & consultation where the Prince is to giue life, and the last and highest commaundement, the Baronie for the nobilitie and higher, the knightes, esquiers, gentlemen and commons for the lower part of the common wealth, the bishoppes for the clergie be present to aduertise, consult and shew what is good and necessarie for the common wealth, and to consult together, and vpon mature deliberation euerie bill or lawe being thrise reade and disputed vppon in either house, the

the other two partes first each a part, and after the Prince himselfe in presence of both the parties doeth consent vnto and alloweth. That is the Princes and whole realmes déede: whereupon iustlie no man can complaine, but must accommodate himselfe to finde it good and obey it.

That which is done by this consent is called firme, stable, and *sanctum*, and is taken for lawe. The Parliament abrogateth olde lawes, maketh newe, giueth orders for thinges past, and for thinges hereafter to be followed, changeth rightes, and possessions of priuate men, legittimateth bastards, establisheth formes of religion, altereth weightes and measures, giueth formes of succession to the crowne, defineth of doubtfull rightes, whereof is no lawe alreadie made, appointeth subsidies, tailes, tares, and impositions, giueth most free pardons and absolutions, restoreth in bloud and name as the highest court, condemneth or absolueth them whom the Prince will put to that tryall: And to be short, all that euer the people of Rome might do either in *Centuriatis comitijs* or *tributis*, the same may be done by the parliament of Englande, which representeth & hath the power of the whole realme both the head and the bodie. For euerie Englishman is entended to be there present, either in person or by procuration and attornies, of what preheminence, state, dignitie, or qualitie soeuer he be, from the Prince (be he King or Quéene) to the lowest person of Englande. And the consent of the Parliament is taken to be euerie mans consent. Alias Tribunitijs.

The forme of holding the Parliament.

Chap. 2.

The Prince sendeth forth his rescripts or writtes to euery duke, marques, baron, and euery other Lorde

temporall or spirituall who hath voice in the parliament, to be at his great counsell of Parliament such a day, (the space from the date of the writ is commonly at the least fortie dayes): he sendeth also writtes to the Sherifes of euery shire to admonish the whole shire to chose two knightes of the parliament in the name of the shire, to heare and reason, and to giue their aduise and consent in the name of the shire, and to be present at that day: likewise to euery citie and towne which of ancientie hath bin wont to finde burgesses of the parliament, so to make election that they might be present there at the first day of the parliament. The knightes of the shyre be chosen by all the gentlemen and yeomen of the shyre, present at the day assigned for the election: the voice of any absent can be counted for none. Yeomen I call here (as before) that may dispende at the least xl. s. of yearely rent of free lande of his owne. These meeting at one day, the two who haue the more of their voices be chosen knightes of the shyre for that parliament: likewise by the pluralitie of the voices of the citizens and burgesses be the burgesses elected. The first day of the parliament the Prince and all the Lordes in their robes of parliament do meete in the higher house, where after prayers made, they that be present are written, and they that be absent vpon sickness or some other reasonable cause (which the prince will allowe) doe constitute vnder their hande and seale some one of those who be present as their procurer or atturney to giue voice for them, so that by presence or atturney and prorey they be all there, all the princes and barrons and all archbishops and bishops, and (when abbots were) so manie abbots as had voice in parliament. The place where the assembly is, is richly tapessed and hanged, a princely and royal throne as appertaineth to a king, set in the middest of the higher place thereof. Next vnder the prince sitteth the Chancellor, who is the voice and

Orator

Orator of the Prince. On the one side of that house or chamber sitteth the archbishops and bishops, ech in his ranke, on the other side the dukes and barons. In the middest thereof vpon woolsackes sitteth the Iudges of the realme, the master of the roules, and the secretaries of estate. But these that sit on the woolsackes haue no voice in the house, but onely sit there to aunswere their knowledge in the law, when they be asked if any doubt arise among the Lordes. The secretaries to aunswere of such letters or thinges passed in counsell whereof they haue the custodie and knowledge: and this is called the vpper house, whose consent and dissent is giuen by ech man seuerally and by himselfe, first for himselfe, and then seuerally for so many as he hath letters and proxies, when it commeth to the question, saying onely content or not content, without further reasoning or replying. In this meane time the knights of the shires and burgesses of the parliament (for so they are called that haue voice in parliamẽt, and are chosen as I haue said before, to the number betwixt iij.C. and iiij.C.) are called by such as it pleaseth the Prince to appoint, into an other great house or chamber by name, to which they aunswere: and declaring for what shyre or towne they aunswere, then they are willed to chose an able & discrete man to be as it were the mouth of them all, & to speake for and in the name of them, and to present him so chosen by them to the Prince: which done they comming al with him to a barre, which is at the nether end of the vpper house, there he first praiseth the prince, then maketh his excuse of vnabilitie, and prayeth the prince that he would command the commons to chose another. The Chancellor in the princes name doeth so much declare him able, as he did declare himselfe vnable, and thanketh the commons for chosing so wise, discrete and eloquent a man, and willeth them to goe and consult of lawes for the cõmon wealth. Then the spea-

ker maketh certaine requests to the prince in the name of the commons, first that his maiestie would be contēt that they may vse and enioy all their liberties and priniledges that the common house was wont to enioy. Secondly that they might franckely and frely say their minds in disputing of such matters as may come in question, and that without offence to his Maiestie. Thirdly that if any should chaunce of that lower house to offend or not to do or say as should become him, or if any should offend any of them being called to that his highnes court: That they thēselues might (according to the ancient custome) haue the punishment of them. And fourthly, that if there came any doubt, whereupon they shal desire to haue thaduise or conference with his Maiestie or with any of the Lordes, that they might doe it: All which hee promiseth in the commons names that they shall not abuse, but haue such regarde as most faithfull, true and louing subiectes ought to haue to their prince.

The Chauncelor answereth in the princes name, as apperteyneth. And this is all that is done for one day, e sometime two. Besides the Chauncelor, there is one in the vpper house who is called Clarke of the Parliament, who readeth the bils. For all that commeth in consultation either in the vpper house or in the neather house, is put in writing first in paper, which being once read, he that will, riseth vp and speaketh with it or against it: and so one after another so long as they shall thinke good. That done they goe to another, and so an other bill. After it hath bin once or twise read, and doth appeare that it is somewhat liked as reasonable, with such amendment in wordes and peraduenture some sentēces as by disputation seemeth to be amended: In the vpper house the Chauncelor asketh if they will haue it engrossed, that is to say put into parchment: which done, and read the third time, and that eftsones

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In like maner in the lower house the speaker sitting in a seate or chaire for that purpose somewhat higher, that he may see and be seene of them all, hath before him in a lower seate his Clarke, who readeth such bils as be first propounded in the lower house, or be sent down from the Lords. For in that point eche house hath equall authoritie, to propounde what they thinke meete, either for thabrogating of some lawe made before, or for making of a newe. All bils be thrise in three diuerse dayes read and disputed vpon, before they come to the question. In the disputing is a maruelous good order vsed in the lower house. He that standeth vp

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bareheaded is vnderstanded that hee will speake to the bill. If moe stande vppe, who that first is iudged to arise, is first heard, though the one doe prayse the law, the other dissuade it, yet there is no altercation. For euerie man speaketh as to the speaker, not as one to an other, for that is against the order of the house. It is also taken against the order, to name him whom ye doe confute, but by circumlocution, as he that speaketh with the bill, or he that spake against the bill, and gaue this and this reason. And so with perpetuall Oration not with altercation, he goeth through till he do make an end. He that once hath spoken in a bill though he be confuted straight, that day may not replie, no though he would chaunge his opinion. So that to one bill in one day one may not in that house speake twise, for else one or two with altercation would spende all the time. The nert day he may, but then also but once.

No reuiling or nipping wordes must be vsed. For then all the house will crie, it is against the order: and if any speake vnreuerentlie or seditiouslie against the Prince or the priuie Counsell, I haue seene them not onely interrupted, but it hath beene moued after to the house, and they haue sent them to the Tower. So that in such a multitude, and in such diuersitie of mindes, and opinions, there is the greatest modestie and temperance of speech that can be vsed. Nevertheless with much doulce and gentle termes, they make their reasons as violent and as vehement the one against the other as they may ordinarily, except it be for vrgent causes and hasting of time. At the afternoone they kepe no parliament. The speaker hath no voice in the house, nor they will not suffer him to speake in any bill to moue or dissuade it But when any bill is read, the speakers office is as briefelie and as plainely as he may to declare the effect thereof to the house. If the commons doe assent to such billes as be sent to them first

agreed

agréd vpon from the Lords thus subscribed, Les commons ont assentus, so if the Lordes doe agrée to such billes as be first agréd vpon by the Commons, they sende them downe to the speaker thus subscribed, Les Seigneurs ont assentus. If they cannot agrée, the two houses (for euerie bill from whence soeuer it doth come is thrise reade in each of the houses) if it be vnderstoode that there is anie sticking, sometimes the Lordes to the Commons, somtime the Commons to the Lords doe require that a certaine of each house may mete together, and so eth part to be enformed of others meaning, and this is alwaies graunted. After which meeting for the most part not alwaies either part agrées to others billes.

In the vpper house they giue their assent and dissent eth man seuerally and by himselfe first for himselfe, and then for so many as he hath proxie. When the Chauncellor hath demanded of them whether they will goe to the question after the bill hath béene thrise reade, they saying onely content or not content, without further reasoning or replying: and as the more number doeth agrée, so it is agréd on, or dashed.

In the neather house none of them that is elected either Knight or Burges can giue his voice to an other nor his consent nor dissent by proxie. The more part of them that be present onely maketh the content or dissent. After the bill hath béene twise reade, and then engrossed and ettsones reade and disputed on ynough as is thought: the speaker asketh if they will goe to the question. And if they agrée he holdeth the bill vp in his hande and sayeth, as manie as will haue this bill goe forwarde, which is concerning such a matter, say yea. Then they which allowe the bill crie yea, and as many as will not, say no: as the crie of yea or no is bigger, so the bill is allowed or dashed. If it be a doubt which crie is the bigger, they diuide the house, the speaker

ker saying, as many as doe allowe the bill goe downe with the bill, and as many as do not sitte still. So they diuide themselues, and being so diuided they are numbred who make the more part, and so the bill doeth spæde. It chaunceth sometime that some part of the bill is allowed, some other part hath much contrariety and doubt made of it: and it is thought if it were amended it would goe forwarde. Then they chose certaine committees of them who haue spoken with the bil & against it to amende it, and bring it in againe so amended, as they amongest them shall thinke mæte: and this is before it is engrossed, yea & some time after. But ỳ agrément of these committees is no preiudice to the house. For at the last question they will either accept it or dash it as it shall séeme good, notwithstanding ỳ whatsoeuer the committees haue done.

Thus no bill is an act of Parliament, ordinaunce, or edict of law, vntill both the houses seuerally haue agræd vnto it, after the order aforesaide, no nor then neither. But the last day of that parliament or session the Prince commeth in person in his parliament robes, and sitteth in his state: all the vpper house sitteth about the Prince in their states and order in their robes. The speaker with all the common house commeth to the barre, and there after thankesgiuen first in the Lordes name by the Chaunceller &c. and in the commons name by the speaker to the Prince, for that hee hath so great care of the good gouernement of his people, and for calling them together to aduise of such thinges as should be for the reformation, establishing & ornament of the common wealth: the Chaunceller in ỳ Princes nams giueth thankes to the Lords & cõmons for their paines and trauailes taken, which he saith the Prince wil remember and recompence when time and occasion shall serue, & that he for his part is ready to declare his pleasure concerning their procédinges, whereby the same may

may haue perfect life & accomplishment by his princelie authoritie, and so haue the whole consent of the Realme. When one reades the title of euerie act which hath passed at that session, but only in this fashion: An act cõcerning such a thing &c. It is marked there what the Prince doth allowe, and to such he sayth: Le roy or la royne le veult. And those be taken nowe as perfect lawes and ordinances of the Realme of Englande and none other, and as shortlie as may be put in print, except it be some priuate cause or lawe made for the benefit or preiudice of some priuate man, which the Romans were wont to call *priuilegia*. These be onely exemplified vnder the seale of the Parliament, and for the most part not printed. To those which the Prince liketh not, he answereth, Le roy or la royne saduisera, and those be accounted vtterly dashed and of no effect.

This is the order and forme of the highest and most authenticall court of Englande, by vertue whereof all those thinges be established whereof I spake before, and no other meanes accounted bailable to make any newe forfaiture of life, member, or landes of ante English man, where there was no lawe ordayned for it before. Nowe let vs speake of the saide partes when they be seuerall.

Of the Monarch King or Queene of Englande.

Chap. 3.

The Prince whom I nowe call (as I haue often before) the Monarch of Englande, King or Queene, hath absolutelie in his power the authoritie of warre and peace, to beste what Prince it shall please him, and to bid him warre, and againe to reconcile himselfe and enter into league or truce with him at his pleasure or

the aduice onely of his priuie counsell, his priuie counsell be chosen also at the Princes pleasure out of the nobilitie or baronie, and of the Knightes, and Esquiers, such and so manie as he shall thinke good, who doth consult daily, or when neede is of the weightie matters of the Realme, to giue therein to their Prince the best aduice they can. The Prince doth participate to them all, or so many of them, as he shall thinke good, such legations and messages as come from forren Princes, such letters or occurrentes as be sent to himselfe or to his secretaries, and keepeth so many ambassades and letters sent vnto him secrete as he will, although these haue a particular oth of a counceller touching faith and secrets administred vnto them when they be first admitted into that companie. So that herein the kingdome of Englande is farre more absolute than either the dukedome of Venice is, or the kingdom of the Lacedemonians was. In warre time, & in the field the Prince hath also absolute power, so that his worde is a law, he may put to death, or to other bodilie punishment, whom he shall thinke so to deserue, without processe of lawe or forme of iudgement. This hath beene sometime vsed within the Realme before any open warre in sudden insurrections and rebellions, but that not allowed of wise and graue men, who in that their iudgement had consideration of the consequence and example, asmuch as of the present necessitie, especiallie, when by anie meanes the punishment might haue beene done by order of lawe. This absolute power is called marciall lawe, and euer was and necessarilie must be vsed in all campe and hosts of men, where the time nor place doe suffer the tarriance of pleading and processe, be it neuer so short, and the important necessitie requireth speedie execution, that with more awe the souldier might be kept in more strait obedience, without which neuer captaine can doe anie thing valeable in the warres.

The

The prince vseth also absolute power in crying and decrying the money of the realme by his proclamation onely. The money is alwaies stamped with the princes image and title. The forme, fashion, maner, weight, fineneſſe, and baſeneſſe therof, is at the diſcretion of the Prince. For whom ſhould the people truſt more in that matter than their prince, ſeeing the coine is only to certifie the goodneſſe of the metall and the weight, which is affirmed by the Princes image and marke? But if the prince will deceiue them and giue them copper for ſiluer or golde, or enhaunce his coyne more than it is woorth, he is deceiued himſelfe, aſwell as he doth goe about to deceiue his ſubiects. For in the ſame ſort they pay the Prince his rentes and cuſtomes. And in time they will make him pay ratably or more for meate, drinke and victuailes for him and his, and for their labour: which experience doeth teach vs nowe in our dayes to be done in all regions. For there euer hath beene, is euer will be a certaine proportiõ betweene the ſcarcitie and plentie of other things, with gold and ſiluer, as I haue declared more at large in my booke of money. For all other meaſures and weights, aſwell of drie things as of wet, they haue accuſtomed to be eſtabliſhed or altered by the Parliament, and not by the princes proclamation onely.

The prince vſeth alſo to diſpence with lawes made, whereas equitie requireth a moderation to be had, and with paynes for tranſgreſſion of lawes, where the payne of the lawe is applyed onely to the Prince. But where the forfaite (as in popular actions it chaunceth many times) is part to the Prince, the other part to the declarator, deteaor or informer, there the Prince doth diſpence for his owne part onely. Where the criminall action is intended by inquiſition (that maner is called with vs at the Princes ſuite) the Prince giueth abſolution or pardon: yet with a clauſe, *modo ſtet ius*

rectus in curia, that is to say, that no man obiect against the offendor. Whereby notwithstanding that he hath the princes pardon if the person offended will take vpon him the accusation (which in our language is called the appeale) in cases where it lieth, the princes pardon doth not serue the offendor.

The prince giueth all the chiefe and highest offices or magistracies of the realme, be it of iudgement or dignitie, temporall or spirituall, and hath the tenthes and first fruites of all Ecclesiasticall promotions, except in the Vniuersities and certaine Colledges which be exempt.

All writtes, executions and commaundementes be done in the princes name. We doe say in England the life and member of the kinges subiectes are the kinges onely, that is to say no man hath hault nor moyenne iustice but the king, nor can hold plea thereof. And therefore all those pleas, which touche the life or the mutilation of man, be called pleas of the crowne, nor can be done in the name of any inferior person than he or she that holdeth the crowne of Englande. And likewise no man can giue pardon thereof but the prince onely: Although in times past there were certaine Countie Palatines, as Chester, Durham, Elie, which were hault iusticers, and writtes went in their name, and also some Lorde marchers of Wales, which claymed like priuiledge. All these are nowe worne away. The supreme iustice is done in the kinges name, and by his authoritie onely.

The Prince hath the wardshippe and first mariage of all those that hold landes of him in chiefe. And also the gouernement of all fooles naturall, or such as be made by aduenture of sicknes, and so continue, if they be landed. This being once graunted by act of Parliament (although some inconuenience hath béene thought to grow thereof, e sith that time it hath béene thought very

berie vnreasonable) yet once annexed to the crowne who ought to go about to take the clubbe out of Hercules hand. And being gouerned iustly & rightly, I see not so much inconuenience in it, as some men would make of it: diuerse other rights and preheminences the prince hath which be called prerogatiues royals, or the prerogatiue of the king, which be declared particularly in the bookes of the common lawes of England.

To be short the prince is the life, the head, and the authoritie of all thinges that be done in the realme of England. And to no prince is done more honor and reuerence than to the King and Quéene of Englande, no man speaketh to the prince nor serueth at the table but in adoration and kneeling, all persons of the realme be bareheaded before him: insomuch that in the chamber of presence where the cloath of estate is set, no man dare walke, yea though the prince be not there, no man dare tarrie there but bareheaded. This is vnderstode of the subiects of the realme: For all strangers be suffered there and in all places to vse the maner of their countrie, such is the ciuilitie of our nation.

The chiefe pointes wherein one common wealth doth differ from another.

Chap. 4.

NOw that we haue spoken of the parliament (which is the whole vniuersall and generall consent and authoritie aswell of the prince as of the nobilitie and commons, that is to say, of the whole head and body of the realme of England) and also of the prince, (which is the head, life and gouernor of this common wealth): there remaineth to shewe, howe this head doeth distribute his authoritie and power to the rest of the members for the gouernment of his realme, & the common wealth of the politike bodie of Englande. And where-

as all common wealthes and gouernementes be most occupyed, and be most diuerse in the fashion of fiue thinges: in making of Lawes and ordinaunces, for their owne gouernement: in making of battel & peace, or truce with forraine nations: in prouiding of mony for the maintenance of themselues, within thē selues, & defence of themselues against their enemies: in chosing and election of the chiefe officers and magistrates: and fiftly in the administration of iustice. The first and third we haue shewed is done by the prince in Parliament. The second and fourth by the Prince himselfe. The fift remaineth to be declared.

Of the three maners and formes of trialles or iudgements in England.

Chap. 5.

By order and vsage of Englande there is three waies and maners, whereby absolute and definite iudgement is giuen, by parliament which is the highest and most absolute, by battle and by the great assise.

Triall or iudgement by parliament.

Chap. 6.

The maner of giuing iudgement by parliament betweene priuate and priuate man, or betweene the Prince and any priuate man, be it in matters criminall or ciuill, for land or for heritage doth not differ frō thorder which I haue prescribed, but it procedeth by bill thrise read in eche house and assented to as I haue saide before, and at the last day confirmed and allowed by the Prince. Howbeit such bils be seldome receiued, because that great counsell being enough occupyed with the publike affaires of the realme, will not gladly intermeddle it selfe with priuate quarels & questions.

Triall

Triall of iudgement by battle.

Chap. 7.

This is at this present not much vsed, partly because of long time the Pope and the clergie to whom in times past wee were much subiect, alwaies cryed against it as a thing damnable and vnlawful, and partly because in all common wealthes (as to the tongue) so to the maners, fashions, habites, yea and kindes of trials and iudgementes, and to all other thinges that is therein vsed, time and space of yeares bringeth a chaunge. But I could not yet learne that it was euer abrogated. So that it remaineth in force, whensoeuer it be demanded. The maner of it is described in Briton.

The triall by assise or xij. men, & first of the three partes which be necessarie in iudgement.

Chap. 8.

The two first iudgementes be absolute supreme and without appeale, and so is also the iudgement by the great assise. And because our manner of iudgementes in England is in many thinges different from the fashion vsed either in Fraunce, or in Italie, or in any other place where the Emperors lawes and constitutions (called the ciuill lawes) be put in vse, it will be necessarie here to make a litle digression, to the intent, that that which shalbe said hereafter may be better vnderstod. All pursuites and actions (we call them in our English tongue pleas) and in barbarous (but now vsuall) latine *placita*, taking that name *abusiue* of the definitiue sentence, which may well be called *placitum* or ἄριστον. The French vseth the same calling in their language, the sentence of their iudges areste or arest: in which wordes notwithstanding after their custome they do not sounde the s, but we call *placitum* the action

not the ſentence, and *placitare* barbarouſlie, or to pleade in engliſh, *agere* or *litigare*. Now in all iudgements neceſſarily being two parties, the firſt we call the impleader, ſuitor, demaunder or demaundaunt and plaintiffe: In criminall cauſes if he profeſſe to be an accuſer, we call him appellant or appellour, and ſo accuſation we call appeale. The other we call the defendant and in criminall cauſes priſoner, for he cannot aunſwere in cauſes criminall before he do render himſelfe or be rendred priſoner.

Iudex is of vs called Iudge, but our faſhion is ſo diuerſe that they which giue the deadly ſtroke, and either condemne or acquite the man for guiltie or not guiltie, are not called Iudges but the xij. men. And the ſame order aſwell is in ciuill matters and pecuniarie, as in matters criminall.

Of pleas or actions.

Chap. 9.

Pleas or actions criminall be in Engliſh called pleas of the crowne, which be all thoſe which tende to take away a mans life or any member of him, for his euill deſeruing againſt the prince and common wealth.

And this name is giuen not without a cauſe. For taking this for a principle that the life and member of an Engliſhman is in the power onely of the prince and his lawes, when any of his ſubiectes is ſpoyled either of life or member, the prince is endammaged thereby, and hath good cauſe to aſke accompt, how his ſubiectes ſhould come to that miſchiefe. And againe for ſo much as the prince who gouerneth the ſcepter, and holdeth the crowne of Englande hath this in his care and charge, to ſee the realme well gouerned, the life, members and poſſeſſions of his ſubiectes kept in peace and aſſurannce: he that by violence ſhall attempt to breake

that

that peace and assurannce, hath forfaited against the scepter and crowne of England: and therfore not without a cause in all inquisitions and inditementes, if any be founde by the iij. men to haue offended in that behalfe, streight the prince is saide to be partie, and hee that shall speake for the prisoner shall be rebuked, as speaking against the Prince. Neuertheless it is neuer defended, but the prisoner and partie defendant in any cause may alleadge for him all the reasons, meanes and defences that he can, and shall be peaceablie heard and quietlie: But in those pleas & pursuites of the crowne, procurer or aduocate he gettes none, which in ciuill and pecuniarie matters (be it for lande, rent, right, or possession, although he plead against the prince himselfe) is neuer denied.

Sauing in appels and vpon a special plea.

Pleas ciuill be either personall or reall, personall as contractes or for iniuries: reall be either possessorie to aske, or to keepe the possession, or *in rem*, which we call a writte of right. For that which in the ciuill lawe is called *actio* or *formula*, we call writ in English: To the Grækes called it worde for worde λογος, and in our barbarous latine we name it *breue*.

Actio is the parties whole suite. *breue* is the kings precept.

And as the olde Romanes had their actions some *ex iure ciuili*, and some *ex iure prætorio*, and ordinarily *prætor dabat actiones & formulas actionum*: so in Englande we retaine still this, and haue some writtes out of the chaunceric, other out of the common place or the kings bench.

Of the chiefe Tribunals, benches or courtes of Englande.

Chap. 10.

In times past (as may appeare to him that shall with iudgement reade the histories and antiquities of Englande) the courtes and benches followed the king

and his court whereſoeuer he went, eſpecially ſhortly after the conqueſt. Which thing being found very cumberſome painefull and chargeable to the people, it was agreed by parliament, that there ſhould be a ſtanding place where iudgement ſhould be giuen. And it hath long time bene vſed in Weſtminſter hall, which king William Rufus builded for the hall of his owne houſe. In that hal be ordinarily ſeene 3. Tribunals or Iudges ſeates. At the entrie on the right hande, the common place, where ciuill matters are to be pleaded, ſpecially ſuch as touch landes or contractes. At the vpper ende of the hall, on the right hande, the kinges bench, where pleas of the crowne haue their place. And on the left hande ſitteth the Chauncellor accompanied with the maſter of the Roules, who in latine may be called *cuſtos archiuorum regis*, and certaine men learned in the ciuill lawe called Maſters of the chauncerie, in latine they may be named *Aſſeſſores*.

Of the times of pleading called termes, & of the Chauncellor and chauncerie.

Chap. 11.

TWo things may be moued in queſtion here, how all Englande (being ſo long and ſo large, and hauing ſo many ſhyres and prouinces therein) can be anſwered of iuſtice in one place, and in 3. benches be they neuer ſo great? An another (whereas the kinges bench is exerciſed in criminall cauſes and in all pleas of the crowne, and the common place in all ciuill cauſes, reall and perſonall) what place then hath the chauncerie?

The firſt queſtion will ſeeme more maruelous and haue more occaſion of doubt, when I ſhall alſo tell that the lawe is not open at all times, no not the third part of the yeare. But where all other cities and common wealthes

wealthes had all the yeare pleas, ſuites, and iudgementes. except for certaine holie daies and harueſt and vintage, or when for ſome vrgent cauſe the lawe was commaunded to be ſtopped, which is called *Inſtitium*: Contrarie in ours, it is but fewe times open. That is onely foure times in the yeare which they call termes. After Michaelmas about ten daies, during fiue or ſixe weekes at the leaſt. After Chriſtmas about a moneth, enduring by the ſpace of three weekes. Then from viii. dayes after Eaſter by the ſpace of three weekes and odde dayes. Likewiſe from the firſt or ſeuenth day after Trinitie ſunday, during two weekes and odde daies. All the reſt of the yeare there is no pleading, entring nor purſuing of actions. This ſmall time, and all that but in one place may ſeeme verie iniurious to the people, who muſt be faine to ſuffer much wrong for lacke of Juſtice and of place and time to pleade: but vnto that hereafter I intende to anſwere more fully, and in the meane while that ſhall ſuffice which the wiſe Cato aunſwered to one who moued that the pleading place in Rome might be couered ouer with canuas as their theaters were, to the intent that the plaintifes and defendauntes that were there might pleade their matters more at eaſe, and not be in ſo much danger of their health by the heate of the ſunne ſtriking full and open vpon their heads, which was no ſmall griefe and diſeaſe, ſpecially at Rome. May (ſaith Cato) for my part I had rather wiſh that all the waies to the place of pleading were caſt ouer with gaithorps, that the feete of ſuch as loue ſo well pleading, ſhould feele ſo much paine of thoſe prickes in going thither as their heads doe of the ſunne in tarrying there: he meant that they were but idle, what heades, buſie bodies, and troubleſome men in the common wealth that did ſo nourith pleading: good labourers and quiet men could be content to ende their matters at home by iudgement of

their neighbours and kinsfolke without spending so their money vpon procurers and aduocates whom we call attornies, counsellers, Sergeants, and generallie men of lawe. Those he accounted profitable citizens, who attende their honest labour and businesse at home, and not stande waiting and gaping vpon their rolles and processe in the lawe: as for the other by his iudgement, it was no matter what mischiefe they suffered. To the other question of the chancerie, this I answere: That our lawe which is called of vs the common lawe as ye would say *Ius ciuile*, is and standeth vpon ἀκριβοδίκαιν, that is *Ius summum*: and their maximees be taken so straitlie that they may not depart from the tenour of the wordes euen as the olde ciuill lawe was. And therefore as that lacked the helpe of a Prætor (which might *moderari illud ius summum*, giue actions where none was, mitigate the exactnesse and rigour of the lawe written, giue exceptions, as *metus, doli mali, minoris ætatis, &c.* for remedies, and maintaine alwaies *æquum & bonum*:) the same order and rancke holdeth our chauncerie, and the chauncellor hath the verie authoritie herein as had the Prætor in the olde ciuill lawe before the time of the Emperours. So he that putteth vp his bill in the chauncerie, after that he hath declared the mischiefe wherein he is, hath reléefe as in the solemne *forum*. And for so much as in this case he is without remedie in the common lawe, therefore he requireth the chauncellor according to equitie and reason to prouide for him and to take such order as to good conscience shall appertaine. And the court of the chauncerie is called of the common people the court of conscience, because that the chauncellor is not strained by rigour or forme of wordes of lawe to iudge but *ex æquo* and *bono*, and according to conscience as I haue saide. And in this court the vsuall and proper forme of pleading of Englande is not vsed, but the forme of pleading

ding by writing, which is vsed in other countries according to the ciuill lawe: and the triall is not by rii. men, but by the examination of witnesse as in other courtes of the ciuill lawe.

Of Iudges in the common Lawe of England, and the manner of tryall and pleading there.

Chap. 12.

The Prince out of the numbers of those who haue beene Counsellers or Sergeants at the Law, which be those who in latin are called *considici* or *aduocati*, chooseth two of the most approued for learning, age, discretion, and exercise, of whom the one is called chiefe Iustice of the Kings bench, or simply chiefe Iustice, the other chiefe Iustice of the common place, and others to the number of fiue or more, which haue each an ordinarie fée or stipend of the Prince.

These doe sit at such daies as be terme, which may be called *Dies legitimi iuridici* or *fasti*, in their distinct places as I haue said before. There they heare the pleading of all matters which doe come before them: and in ciuill matters where the pleading is for money or land or possession, part by writing, and part by declaration and altercation of the aduocates the one with thother, it doeth so proceede before them till it doe come to the issue, which the latines doe call *status causæ*, I doe not meane *contestationem litis*, but as the Rhetoritians doe call *status*, we doe most properly call it the issue, for there is the place where the debate and strife remaineth (as a water belde in a close and darke vessel issueth out, is voided and emptied) and no where else: that stroke well striken is the departing of all the quarelles. Issues or *status* in our Lawe be ordinarily two, *facti* and *iuris*.

Of the two maner of issues.

Chap. 13.

IF the question be of the lawe, that is if both the parties doe agree vpon the fact, and eche doe claime that by lawe he ought to haue it, and will still in that sort maintaine their right, then it is called a demurrer in lawe: where if in the lawe the case seeme to the Iudges that sitte doubtfull, it is called a checker chamber case, and all the Iudges will meete together, and what they shall pronounce to be the lawe, that is holde for right, and the other partie loseth his action or lande for euer. If the Sergeants or Counsellors doe stand vpon anie point in the law which is not so doubtfull, the Iudges who be taken for most expert biddes him goe forwarde: and if he hath no other to say but standeth vpon that point of the lawe, that bidding goe forwarde is taken that he loseth his action, and the defendant is licensed to depart without a day: and this is where the issue or question is of the lawe or *Iuris*. So is that case where the lawe is not doubtfull according to the matter contained in the declaration, answere, replication, reioinder or triplication, the Iudge out of hande decideth it. And it is the maner that eche partie must agree to the other still in ỳ fact which he cannot denie. For if he once come to denie any dede as not done, not his writing, that the man by whome the aduersarie claimeth was not the aduersaries auncestor, or the euidence which his aduersarie bringeth is not true, or that his gift was former, or any such like exception which is vaileable to abate the action or barre the partie: and the other ioyneth in the affirmatiue and will averre and proue the same, this is called the issue, and immediatly all question of the lawe ceaseth as agreed by both the parties

But somtimes it is determined by the same court onely.

This shoulde be meant of a respondes ouster, when the opinion is against him that taketh an exception which is not peremptorie. He may deny it by protestation.

parties, that there is no question in the lawe. Then as that issue *facti* is founde by the xij men of whom we shall speake hereafter, so the one partie or other loseth his cause and action: so that contrarie to the maner of the ciuill lawe where first the fact is examined by witnesses, indices, tormentes and such like probations to finde out the truth thereof, and that done the aduocats doe dispute of the lawe to make of it what they can: saying, *ex facto ius oritur*: héere the Sergeantes or counsellers before the Iudges doe in pasling forewarde with their pleading determine and agrée vpon the lawe, and for the most part and in manner all actions as well criminall as ciuill, come to the issue and state of some fact which is denied of the one partie, and auerred of the other: which fact being tried by the xij men as they find, so the action is wonne or lost. And if a man haue many peremptorie exceptions (peremptorie exceptions I call onely those which can make the state and issue) because the xij men be commonly rude and ignorant, the partie shalbe compelled to chose one exception whereupon to found his issue, which chosen if he faile in that by the verdite of xij men, he loseth his action and cause, and the rest can serue him for nothing.

Hauing séene both in France and other places manie deuises, edictes and ordinaunces howe to abridge proces and to finde howe that long suites in law might be made shorter: I haue not perceiued nor reade as yet so wise, so iust, and so well deuised a meane found out as this by any man among vs in Europe.

Trueth it is that where this fashion hath not béene vsed and to them to whom it is newe, it will not be so easily vnderstood, and therefore they may peraduenture be of contrarie iudgement: but the more they doe weigh and consider it, the more reasonable they shall finde it.

Howe the issue, question or *status iuris* is decided, I

haue tolde: now I will shewe howe it is tryed when it doth come to the question, state or issue of the deede or fact. And first I must speake more largely of the manner of proceeding in the processe, and of such persons as be necessarie for the execution thereof.

Of the sherife of the shire, and of the court of exchequer.

Chap. 14.

The Romans had to execute the commaundementes of the magistrates *Lictores, viatores, accensos*. The ciuill lawe sith that time hath other names, termes, and officers. The execution of the commaundementes of the magistrates in England is ordinarily done by the sherifes. The sherife (which is as much to say as the Reeue or Bayly of the shire) is properly word for word *Questor pronunciæ*: it is he which gathereth vppe and accompteth for the profittes of the shire, that come to the exchequer. The exchequer (which is *fiscus principis*, or *erarium publicum*, and I cannot tell in what language it is called *Scaccarium*, some thinke that it was first called *statarium*, because that there was the stable place to account for the reuenues of the crowne, aswell that which came of the patrimony which we cal the demeasnes: as that which commeth of other incident acquisitions be they rentes, customes, tenthes, quinzieslmes, tares, subsidies, whereseuer the Prince or his court be according to the time and occasion) was a place stable, continual and appointed for to reckon and account. The bearers of the account (who in latin may be called *tribuni erarij*) haue auditors vnder them which the Latines doe call *Rationales*: but they are the chiefe for the accounts of the Prince, and may be called *Iuridici rationales*, in English we cal them Barons of the exchequer, whereof

Scats in auncient Saxon is that which we by a borowed terme call treasure, whereof is deriued Scaccarij signifying a court dealing with the kinges treasure or reuenues, & also escaetor that is an officer which imploieth the kinges profit.

whereof is one who is called the chiefe Baron, as *Tribunus* or *Iudicius rationalis primus* or *princeps*. The chiefe of all is called high treasurer of Englande, as you would say in latin *Supremus erarij anglici quaestor*, or *Tribunus erarius maximus*. In this court be heard *Quadruplatores* (which we call promoters) which be those that in popular and penall action be *delatores*, hauing thereby part of the profit by the lawe assigned. In this court if anie question be, it is determined after the order of the common lawe of Englande by the rij men as I haue saide: and all customers which were in latine called *publicarij* in Greeke [illegible] do account in this office. The Sherife of the shire is called in our common latine *Vicecomes*, as one would say *vicarius comitis* or *procomes*, doing that seruice to attende vpon the execution of the commaundementes of the Tribunalles or Iudges which the Earle or countie should doe, which Earle or Countey for the most part was attending vppon the Prince in the warres or otherwise about the Prince as the worde beareth, *comes principis*: whereby it may appeare that the chiefe office of the Countie or Earle was to see the kinges Iustice to haue course and to be well executed in the shire or Countie, and the Princes reuenues well answered and brought in *erarium principis*, which is called of vs the treasurie.

If any fines or amerciaments, which in latin be called *multa*, be leuied in anie of the saide courtes vpon any man, or any arrerages of accountes by the latines called *reliqua*, of such thinges as is of customes, tares, subsidies or any other such occasions, the same ỹ sherife of the shire doth gather and is respondent therefore in the exchequer. As for other ordinarie rentes of patrimoniall landes and most commonly for the tares, customes, and subsidies, there be particular receiuers and collectors which doe answere it into the exchequer. The sherife hath vnder him an vnder sherife at his

charge and appointment learned somewhat in the law, especially if he be not learned himselfe, & diuers bailifes which be called errantes, whom he maketh at his pleasure, who can knowe ech lande and person in the shyre, and their abilitie to goe vppon enquestes, either to distreine or to summon him to appeare whom the sherife shall appoint, and for this cause to the sherifes as to the minister most proper of the lawe the writtes be directed.

When anie thing commeth to an issue of the deede or fact, there is a writ or writing directed to the sherife of the shire where the lande is, whereupon the controuersie is, or where the man dwelleth of whome the money is demaunded, which writ is called *venire facias*. Then after the same effect an *alias*, *pluries* or *distringas* according to the nature of the action to the returne of the sherife. And if for anie disobedience of not coming and appearing there be a fine (which the latins doe call *Mulcta*) set vpon any iurors head, the sherife is charged with it, and taketh the distresses which in latin be called *Pignora*, and answereth therefore to the exchequer. The sherife also is readie by himselfe or by his vndersherife to serue aswell the Iustices of peace in their quarter sessions as ỳ Iustices called *Itinerantes* in their great assises, when they come into the shyre, which is twise in the yeare, to dispatch and voide actions criminall and ciuil depending at the common law, and which be come nowe to the issue. He hath also the charge of all the prisoners cõmitted to the prison which we call the gaole, and when any is condemned to die, it is his charge to see the sentence executed. To be short, he is as it were the generall minister and highest for execution of such commaundementes according to the lawe as the Iudges ordaine, and this is ynough for the sherife.

Of

Of the xij. men.

Chap. 17.

Of what manner and order of men in the common welth the xij men be I haue alreadie declared. The sherife alwaies warneth xxiiij to appeare, least peraduenture any might be sicke or haue a iust cause of absence: and if there be not enowe to make an enquest, the absentes be amersed. For although they be called xij men as a man would say *duodecim viri*, yet if they be xxj, xx or the whole number of xxiiij, that is no matter, xij they must be at the least to make an enquest or as some call it a quest. An enquest or quest is called this lawefull kinde of triall by xij men. In actions ciuill which is either of contractes or for lande or possession when so many of those which be warned appeare at the call as be able to make an enquest, which as I said before be no lesse than xii, either part when they be come taketh their chalenges against so many of them as they will, which be that he may not spende so much lande a yeare, he is alied, fed, or seruant to his aduerse partie, he is his enemie &c. And two of the whole number doe trie and allowe or disallowe the rest. If after exceptions there be so many reiected that there is not a full enquest, in some cases that day is lost, in some the enquest is filled *ex circumstantibus*: when the quest is full, they be sworne to declare the trueth of that issue according to the euidence and their conscience. Then the Sergeantes of either side declare the issue, and each for his client saith as much as he can. Euidences of writinges be shewed, witnesses be sworne, & heard before them, not after the fashion of the ciuill law but openly, that not only the xii, but the Iudges, the parties and as many as be present may heare what ech witnesse doeth

That is not order but abuse.

say: The aduerse partie or his aduocates which wee call counsellers and sergeants interrogateth sometime the witnesses, and driueth them out of countenance. Although this may seeme strange to our Ciuillians nowe, yet who readeth Cicero and Quintillian well shall see that there was no other order and maner of examining witnesses or deposing among the Romanes in their time. When it is thought that it is enough pleaded before them, and the witnesses haue saide what they can, one of the Iudges with a briefe and pithy recapitulation rehearseth to the xii in summe the argumentes of the sergeants of either side, that which the witnesses haue declared, and the chiefe pointes of the euidence shewed in writing, and once againe putteth them in minde of the issue, and sometime giueth it them in writing, deliuering to them the euidence which is shewed on either part, if any be, (euidence heere is called writings of contractes autenticall after the manner of England, that is to say, written, sealed and deliuered) and biddeth them goe together. Then there is a baylife charged with them to keepe them in a chamber not farre off without bread, drinke, light, or fire vntill they be agréed, that is, till they all agrée vpon one verdite concerning the same issue, and vppon one among them who shall speake for them all when they be agréed: for it goeth not by the most part, but each man must agree. They returne and in so fewe wordes as may be they giue their determination: fewe I call vi or vii or viii wordes at the most (for commonly the issue is brought so narrow, that such number of words may be ynough to affirme or to denie it) which done they are dismissed to goe whither they will. The partie with whom they haue giuen their sentence, giueth the enquest their dinner that day most commonly, and this is all that they haue for their labour, notwithstanding that they come some xx some xxx or xl miles or more, to the place

Courtesie and not ductie.

where

where they giue their verdite all, the rest is of their owne charge. And necessarilie all the whole xii must be of the shire and iiii of them of the hundred where the lande lyeth which is in controuersie, or where the partie dwelleth who is the defendant.

Of parties of Shires called hundreds, lathes, rapes, wapentakes.

Chap. 16.

An hundred, or lath, rape, or wapentake be called of the diuisions or partes of shires in diuers countries diuerslie named after the manner and language of each countrey. For the shires be diuided some into v. xii. xiii. xvi. xx. or xxx. hundreds, more or lesse, either that they were at the first C. townes & villages in eche hundred: and although now they be but xvi. xx. xxx. xl. l. lx. more or lesse, yet it is still called an hundred, or else there were but so many at the first as be nowe, or a fewe more or lesse, and they did finde the King to his warres an hundred able men. Lath, and rape I take to be names of seruice, for that so many townes in olde time, and in the first pouertie of the Realme did mæte together in one day to carrie the Lordes corne into his barne, which is called in olde English a Lath. Or that they mette at commaundement of the Lorde to reape his corne.

Wapentake I suppose came of the Danes or peraduenture of the Saxons. For that so manie townes came by their orders then, to one place, where was taken a muster of their armour and weapons, in which place from them that could not finde sufficient pledges for their good abearing, their weapons were taken away: weapen or wapen in olde English doe signifie all armes offensiue, as sworde, dagger, speare, launce, bill, bowes,

Or as some say, because in such places the subiects had their armour appointed them, and there did take their weapons.

bowes, arrowes.

Of the place where the musters were taken or where the saide seruices were done, the hundreds, Lathes, Rapes, and wapentakes had and haue yet their names, which be most commonly good townes, and it is to be thought at the first they were all such. But sometime nowe in places whereof the hundred hath the name, no mention nor memorie of a townes remaineth, such mutation time bringeth with it of all thinges. A hundred hath one or two high Constables, who hath some authoritie ouer all the lower, and particular Constables. Those high Constables bee made by the Justices of the peace of the shire, and each hundred hath his baylife, who is made by the Lorde if any hath that libertie, or else by the sherife of the shire for the time being.

Of the court Baron.

Chap. 17.

IT may appeare strange that of xxvi shires, whereof each shire is diuided into diuerse hundreds, each hundred containing diuerse parishes, all pleading should be but in one place, that is in Westminster hall, and that but in certaine times of the yeare, making litle more than one quarter of the yeare in the whole. And one would thinke ỹ there should be much lacke of Justice & right, and much wrong taken without redresse. But it is not so: The people being accustomed to liue in such an equalitie of Justice, & that in such sort that ỹ rich hath no more aduantage therein than the poore, the proces, and proceedinges to the iudgement being so short, and iudgementes also being peremptorie and without appellation: Yet to helpe for small matters, where no great summe is in question there are other

courtes.

courtes. In euerie ſhire from thꝛée wéekes to thꝛée wéekes the ſherife foꝛ ſmall thinges not paſſing xl. s. and in certaine hundꝛeds and liberties the bailie likewiſe from thꝛée wéekes to thꝛée wéekes holdeth plea. And whoſoeuer is poſſeſſioner and owner of a mannoꝛ, may holde from thꝛée wéekes to thꝛée wéekes, oꝛ at his pleaſure of his tennantes and amongeſt his tennantes a court called a court Baron. And there his tennantes being ſwoꝛne make a Jurie which is not called the enqueſt, but the homage. Theſe pꝛincipallie doe enquire of the copie holders, and other fꝛée holders that be dead ſith the laſt court, and hꝛing in their heires, and next ſucceſſours, and likewiſe of incrachment oꝛ intruſion of anie of the tennantes againſt the Loꝛde, oꝛ among themſelues. They make oꝛders and lawes amongeſt themſelues, the paine of them if they be after bꝛoken, commeth to the Loꝛde. And if anie ſmall matter be in controuerſie, it is put to them, and commonly they doe ende it. But theſe courtes doe ſerue rather foꝛ men that can be content to be oꝛdered by their neighbours, and which loue their quiet and pꝛofit in their huſbandꝛie, moꝛe than to be buſie in the lawe. Foꝛ whether partie ſoeuer will, may pꝛocure a writte out of the higher court to remoue the plea to Weſtminſter.

In cities and other great townes there be diuerſe liberties to holde plea foꝛ a bigger ſumme, which doe determine aſwell as the common lawe, and after the ſame manner, and yet foꝛ them that will, it may be removed to Weſtminſter hall.

King Henrie the eight oꝛdained firſt a pꝛeſident, Counſellers and Judges, one foꝛ the marches of Wales, at Ludlowe, oꝛ elſe where: an other foꝛ the noꝛth partes of Englande at Yoꝛke, where be manie cauſes determined. Theſe two are as be Parliaments in Fraunce. But yet if there be anie matters of great conſequence, the partie may moue it at the firſt, oꝛ re-

mone it afterwardes to Weſtminſter hall, and to the ordinarie Iudges of the Realme, or to the Chaunceller, as the matter is.

Theſe two courtes doe heare matters before them, part after the common lawe of Englande, and part after the faſhion of the chauncerie.

Of the Leete or lawe day.

Chap. 18.

Leete or lawe day is not incident to euerie manner, but to thoſe onely which by ſpeciall graunt, or long preſcription haue ſuch libertie. This was as it may appeare firſt a ſpeciall truſt and confidence and commiſſion giuen to a fewe put in truſt by the Prince, as is nowe to the Iuſtices of peace, to ſée men ſworne to the Prince, to take pledges and ſuerties in that maner of one for an other to anſwere for obedience and truth, to enquire of priuie conſpiracies, fraies, murders, and bloudſheddes, and to this was added the ouerſight of bread and ale, and other meaſures. Many times they that be out of the homage and court Baron of that manner and Lordſhip, be neuertheleſſe aſtreined and anſwerable to come to the Léete. This Léete is ordinarily kept but twiſe in the yeare, and that at termes and times preſcribed.

The Léete or Lawe day is all one, and betokeneth worde for worde, *legittimum* or *iuridicum diem*. Lawe the olde Saxons called lant or lag, and ſo by corruption and chaunging of language from Lant to Leete, vnderſtanding day. They which kéepe our full engliſh terme, call it yet lawe day.

Of

Of the proceedinges of cauſes criminall, and firſt of the Iuſtices of the Peace.

Chap. 19.

BEfore the maner of procæding in cauſes criminall can be well vnderſtood, it will be neceſſarie to ſpeake of three perſons, the Iuſtices of peace, the Coroners, and the Conſtables. The Iuſtices of peace be men elected out of the nobilitie, higher and lower, that is the Dukes, Marquiſes, Barons, Knightes, Eſquiers, and Gentlemen, and of ſuch as be learned in the lawes, ſuch and in ſuch number as the Prince ſhall thinke meete, and in whome for wiſedome and diſcretion hee putteth his truſt, inhabitantes within the countie: ſaving that ſome of the high nobilitie and chiefe magiſtrates for honors ſake are put in all, or in the moſt of the commiſſions of all the ſhires of England. Theſe haue no time of their rule limited but by commiſſion from the Prince alterable at pleaſure.

At the firſt they were but iiij, after viij, nowe they come commonly to xxx or xl in euerie ſhire, either by increaſe of riches, learning, or actiuitie in policie and gouernement. So manie more beeing founde, which haue either will, or power, or both, are not to manie to handle the affaires of the common wealth in this behalfe. Of theſe in the ſame commiſſion be certaine named, which be called of the *Quorum*, in whome is eſpeciall truſt repoſed, that where the commiſſion is giuen to xl or xxx, and ſo at the laſt it commeth to iiij or three, it is neceſſarie for the performaunce of many affaires to haue likewiſe diuerſe of the *Quorum*. The wordes of the commiſſion be ſuch, *Quorum vos* A B. C D. E F. *vnum eſſe volumus.*

The Iuſtices of the peace be thoſe in whome at this

time for the repressing of robbers, theeues, and vagabunds, of priuie complots and conspiracies, of riotes, and violences, and all other misdemeanors in the common wealth, the Prince putteth his special trust. Each of them hath authoritie vpon complaint to him made of any theft, robberie, manslaughter, murder, violence, complotes, riottes, vnlawefull games, or any such disturbance of the peace, and quiet of the Realme, to commit the persons whom hee suppoleth offendors, to the prison, and to charge the Constable or sherife to bring them thither, the gaoler to receaue them and keepe them till he and his fellowes doe méete. A fewe lines signed with his hande is ynough for that purpose: these doe méete foure times in the yeare, that is, in each quarter once, to enquire of all the misdemeanors aforesaid: at which daies the sherife, or his vndersherife with his baylifes be there to attende vpon him, who must prepare against that time foure enquestes of xviij yeomen a peece of diuerse hundredes in the shire, and besides one which is called the great enquest out of the bodie of the shire mingled with all. These fiue enquests are sworne before them to enquire of all heretiques, traitors, theftes, murders, manslaughters, rapes, false moniers, extortioners, riottes, routes, forcible entries, vnlawefull games, and all such thinges as be contrarie to the peace and good order of the Realme, and to bring in their verdit. If they among themselues vpon their owne knowledge doe finde any culpable, they cause one of the clarkes to make the bill. And if any be there to complaine vpon any man for these faultes, he putteth in his bil, which bil is presented first to the Justices sitting vpon the bench, to wit if it be conceiued in formes of lawe, which done the complainant doth deliuer it to one of these enquestes, and or the complainant is sworne, he declareth to the what he can, for the proofe of it. And if they find it true they do nothing but write

This is not alwaies and in al places obserued, but onely concerning the graunt enquest.

write on the backeside of it, *billa vera*, as ye would say, *scriptum verum*: or *accusatio iusta*, or *reus est qui accusatur*: Then he who is there named is called indicted.

If they do not finde it true, they write on the backside *ignoramus*, & so deliuer it to the Justices of whome it is rent into péeces immediatly: he that is indicted is accounted a lawefull prisoner, and after that time looked more streitly vnto. For this inditement is no conuiction: and if he be indicted, and be not alreadie in prison, the sherife if he can finde him, bringeth him into prison: if he cannot finde him, proces is made out against him, to render himselfe prisoner, or else hee shalbe outlawed. So he is called thrée times in diuerse countie daies to render himselfe to the Lawe. The fourth is called the exigent, by which he is outlawed not rendring himselfe, as ye would say: *exactus* or *actus in exilium*. The outlawe looseth all his goods to the King for his disobedience. But if after he will render himselfe to answere to the lawe, and shewe some reasonable cause of his absence, manie times of grace his outlawerie is pardoned. These méetinges of the Justices of peace foure times in the yeare, be called quarter sessions or sessions of enquirie, because that nothing is there determined touching the malefactors, but onely the custodie of them: and this kinde of procéeding which is by inquisition of the xij men within themselues, and their owne consciences, or by denunciation of him that putteth in his bill to the xij, is called at the kings suite, and the king is reckoned the one partie, and the prisoner the other. The Justices of the peace doe méete also at other times by commandement of the Prince vpon suspition of warre, to take order for the safetie of the shire, sometimes to take musters of harnesse and able men, and sometime to take orders for the excessiue wages of seruaunts and labourers, for excesse of apparell, for vnlawefull games, for conuenti-

The vse of *capias* and *exigens* vpon inditementes is otherwise.

They are put to fines.

uenticles and euill orders in alehouses, and tauernes, for punishment of idle and vagabund persons, and generally as I haue saide, for the good gouernement of the shire, the prince putteth his confidence in them. And commonly euery yeare, or each seconde yeare in the beginning of summer or afterwardes, (for in the warme time the people for the most part be more vnrulie) euen in the calme time of peace, the prince with his Counsell chooseth out certaine articles out of penall Lawes alreadie made for to represse the pride and euill rule of the popular, and sendeth them downe to the Iustices, willing them to loke vpon those points, and after they haue mette together and consulted among themselues, howe to order that matter most wisely and circumspectly, whereby the people might be kept in good order and obedience after the lawe, they diuide themselues by three or foure: and so each in his quarter taketh order for the execution of the saide articles. And then within certaine space they mete againe and certifie the prince or his priuie counsell how they doe finde the shire in rule & order touching those points and all other disorders. There was neuer in any common wealth diuised a more wise, a more dulce and gentle, nor a more certaine way to rule the people, whereby they are kept alwaies as it were in a bridle of good order, & sooner loked vnto that they should not offend, than punished when they haue offended. For seeing the chiefe amongst them, their rulers to haue this speciall charge and doe call vpon it, and if occasion so doe present, one or two presently either punished or sent to prison for disobedience to those olde orders & lawes, they take a feare within themselues, they amende and doe promise more amendment. So that it is as a newe forbushing of the good lawes of the realme, and a continuall representing of disorders, which doe naturally rest among men. But as the inuention of this, and

the

the vſe and execution thereof is the moſt benefite that can be deuiſed for the common wealth of Englande: So when it ſhalbe miſuſed, diſſembled with, or be contemned, & be done *pro forma tantum*, and as they terme it in Fraunce par mainere d'acquit onely, it will be the preſent ruine (though not at the firſt apperceiued) of the common wealth. Of which the fault may be as well in the commaunders for not making good choice what and howe they commaunde, as in the commaunded, for not executing that which is commaunded.

Of hue and crie and recogniſaunce taking vpon them that may giue euidence.

Chap. 20.

By the olde lawe of Englande if any theft, or robberie be done, if he that is robbed, or he that ſeeth or perceiueth that any man is robbed doe leuie hue & crie, that is to ſay, doe call and crie for aide, and ſay that a theft or robberie is done contrarie to the Princes peace and aſſurance: The Conſtable of the village to whom he doth come, and ſo make that crie, ought to raiſe the pariſh to aide him and ſeeke the theefe, and if the theefe be not founde in that pariſh, to goe to the next and raiſe that Conſtable, and ſo ſtill by the Conſtables and them of the pariſh one after an other. This hue and crie from pariſh to pariſh is caried, till the theefe or robber be founde. That pariſh which doeth not his dutie, but letteth by their negligence the theefe to depart, doeth not onely paie a fine to the king, but muſt repaie to the partie robbed his dammages. So that euerie Engliſh man is a ſergiant to take the theefe, and who ſheweth himſelfe negligent therein, doth not only incurre euill opinion therefore, but hardly ſhall eſcape

punishment: what is done with the theefe or robber when he is taken, I shall shewe you hereafter. The same manner is followed if anie man be slaine, for streight the murtherer is pursued of euerie man till he be taken. So soone as any is brought to the Justices of peace by this hue or crie, by the Constable or anie other who doth pursue the malefactor, he doeth examine the malefactor, and writeth the examination and his confession: then he doth binde the partie that is robbed or him that sueth, and the Constable, and so manie as can giue euidence against the malefactor to be at the next sessions of gaole delinerie to giue their euidence for the Quæne. He bindeth them in recognisance of x l. xx l. xxx l. xl l. or C. l. according to his discretion, and the qualitie of the crime: which certified vnder his hande, is leuied vpon the recognizance if they fayle of being there.

Of the Coroner.

Chap. 21.

But if anie man, woman, or child, be violently slaine, the murtherer not knowen, no man ought or dare burie the bodie before the Coroner hath sæne it. The Coroner is one chosen by the Prince of the meaner sort of gentlemen, and for the most part a man sæne in the lawes of the Realme to execute that office. And if the person slaine, (slaine I cal here, whosoeuer he be, man, woman, or childe that violently commeth to his death, whether it be by knife, poyson, cord, drowning, burning, suffocation, or otherwise, be it by his owne fault or default, or by any other) if (I say) the person slaine be buried before the Coroner doe come (which for the most part men dare not doe) he doeth cause the bodie to be taken vp againe, and to be searched, and vpon

vpon the ſight of the bodie ſo violently come to his death, he doth empanell an enqueſt of xij men or mo, of thoſe which come next by, be they ſtrangers or inhabitantes, which vpon their othes, and by the ſight or viewe of the bodie, and by ſuch informations as they can take, muſt ſearch howe the perſon ſlaine came to his death, and by whome as the doer or cauſer thereof. Theſe are not incloſed into a ſtreit place, (as I tolde before of other enqueſtes) but are ſuffered to goe at large, and take a day, ſometime after xx or xxx dayes, more or leſſe, as the fact is more euident, or more kept cloſe, to giue their euidence, at which day they muſt appeare there againe before the ſayde Coroner to giue their verdict. So ſometime the perſon ſlaine himſelfe, ſometime the brother, the huſbande, the wife, the ſiſter, ſome of acquaintance or ſtranger, ſuch as God wil haue reueiled, be taken. For whoſoeuer they doe finde as guiltie of the murder, he is ſtreight committed to priſon, and this is againſt him in the nature of an inditement, which is not a full condemnation, as ye ſhall ſee hereafter.

The empanelling of this enqueſt, and the viewe of the bodie, and the giuing of the verdict, is commonly in the ſtréte in an open place, and in *Corona populi:* but I take rather that this name commeth becauſe that the death of euerie ſubiect by violence is accounted to touch the crowne of the Prince, and to be a detriment vnto it, the prince accounting that his ſtrength, power, and crowne doth ſtande and conſiſt in the force of his people, and the maintainaunce of them in ſecuritie and peace.

Of the Conſtables.

Chap. 22.

THeſe men are called in the elder bookes of our lawes of the Realme *cuſtodes pacis*, and were at the firſt in greater reputation than they be nowe. It may appeare that there was a credit giuẽ vnto them not altogether vnlike to that which is nowe giuen to the Juſtices of peace. To this day if any affraie chaunce to be made, the Conſtables ought and will charge them that be at debate to kæpe the Princes peace: and whoſoeuer refuſeth to obey the Conſtable therein, all the people will ſet ſtreight vpon him, and by force make him to render himſelfe to be ordered. Likewiſe if any be ſuſpected of theft, or receiuing, or of murther, or of manſlaughter, the Conſtable may take ſuch perſons, yea enter into any mans houſe with ſufficient power to ſearch for ſuch men till he finde them: and if hee ſée cauſe kæpe the ſuſpected perſons in the ſtockes, or cuſtodie, till he bring them before a Juſtice of the peace to be examined. But for ſo much as euerie litle village hath commonly two Conſtables, and many times artificers, labourers and men of ſmall abilitie be choſen vnto that office, who haue no great experience, nor knowledge, nor authoritie, the Conſtables at this preſent (although this they may doe vpon their owne authoritie) yet they ſeeme rather to be as it were the executors of the commaundement of the Juſtices of peace. For the Juſtice of peace as ſone as he vnderſtandeth by complaint that any man hath ſtolen, robbed, ſlaine, or any ſeruant or labourer without licence hath departed out of his maiſters ſeruice, or any that liueth idle and ſuſpectly, knowing once in what pariſh he is, he writeth to the Conſtable of the pariſh, commanding him

One or two Conſtables, hedboroughes or tithingmen.

him in the Princes name to bring that man before him: the Constable dareth not disobey. The man is brought and examined by the Justice, and if the Justice doe finde cause, hee committeth him to the same Constable to conuey him further to the Princes gaole, where the partie must lie till the Justices of peace doe mete either at their quarter sessions, or at their gaole deliuerie, and that the lawe hath either condemned or acquited him. These Constables are called in some places headborowes, in some places tithingmen, and be like to them, who are called Consuls in manie townes and villages in Fraunce. The Constables are commonlie made and sworne at the Letes of the Lordes, chosen thereto by the homage, and they kepe that office sometime ij. iij or iiij yeare, more or lesse, as the parish doth agree. What headborow doth betoken it is easily knowen, our language doth declare him as the head or chiefe of the borowe or village: likewise tithing man is the chiefe of ỹ tithing. Constable semeth to me to come of our olde English word Kinning, which is Kinnyngstable, as ye would say a man established by the king, for such thinges as appertaineth to pleas of the crowne & conseruation of the Kings peace, & as I saide at the first were in some more reputation, approching to that authoritie which the Justices of peace nowe doe holde.

Kinningstable is *Regia virgula*, the Kinges rod or wand, signifying the Kinges power or authoritie, a representation whereof is the vse of maces & white staues by officers in the cõmon wealth.

Of the sessions of gaole deliuerie, and the definitiue proceedinges in causes criminall.

Chap. 23.

How theeues and murtherers and other malefactors against the crowne and the peace are taken & brought into holde to answere to iustice, partly by hue

and crie, partly by information, and partly by the diligence of the Iustices of peace and the Constables, and howe that at the quarter sessions they be indicted, or else by the Coroners yee haue heard before. Enditement (as yee may perceiue by that which is also gone before) is but a former iudgement of xij men which be called enquirers, and no definitiue sentence, but that which in latin is called *præiudicium*, it doeth but shewe what opinion the countrey hath of the malefactor: and therefore commonly men be indicted absent, not called to it, nor knowing of it. For though a man be endicted, yet if when he come to the arainement, there be no man to pursue further, nor no euidence of witnesse or other triall and *indices* against him, he is without difficultie acquited. No man that is once indicted can be deliuered without arainement. For as xij haue giuen a preiudice against him, so xij againe must acquite or condemne him. But if the prisoner be not indicted, but sent to prison vpon some suspition or suspitious behauiour, and none doe pursue him to the enditement, first being proclaimed thus, A.B. prisoner standeth here at the barre, if anie man can say anie thing against him, let him now speake, for the prisoner standeth at his deliueraunce: if no man doe then come, hee is deliuered without any further proces or trouble, agreeing first with the gaoler for his fees. And these be called acquited by proclamation. Twise euerie yeare the one is commonly in lent what time there is vacation from pleading in Westminster hall, the other is in the vacation in summer, the Prince doth sende downe into euerie shire of Englande certaine of his Iudges of Westminster hall, and some Seargeantes at the lawe with commission to heare and determine iointly with the Iustices of the peace all matters criminall and all prisoners which be in the gaoles. These Iudges doe goe from shire to shire till they haue done their circuit of so ma-

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nie ſhires as be appeinted to them for that yeare: at the ende of the terme going before their circuit it is written and ſet vp in Weſtminſter hall on what day and in what place they will be. That day there meeteth all the Juſtices of the peace of that ſhire, the ſherife of that ſhire, who for that time beareth their charges, and aſketh after allowance for it in the Exchequer. The ſherife hath readie for criminall cauſes (as I writ before at the ſeſſions of inquire) iiij. v. or vj. enqueſtes readie warned to appeare that day to ſerue the Prince, and ſo manie more as he is commaunded to haue readie to go in ciuill matters betwixt priuate men, which they call *Niſi prius*, becauſe that worde is in the writ.

In the towne houſe, or in ſome open or common place, there is a tribunall or place of iudgement made aloft vpon the higheſt bench, there ſitteth the two Judges which be ſent downe in Commiſſion in the middeſt. Next them on eche ſide, ſitteth the Juſtices of peace, according to their eſtate and degree. On a lower bench before them, the reſt of the Juſtices of the peace, and ſome other gentlemen or their clarkes. Before theſe Judges and Juſtices, there is a table ſet beneath, at which ſitteth the *Cuſtos rotulorum*, or keeper of writtes, Thercheto, the vnderſhirife, and ſuch clarkes as doe write. At the ende of that table, there is a barre made with a ſpace for thenqueſtes and xij men to come in when they are called, behinde that ſpace another barre, and there ſtand the priſoners which be brought thither by the gaoler all chained one to another. Then the cryer crieth, and commaundeth ſilence. One of the Judges briefely telleth the cauſe of their comming, & giueth a good leſſon to the people. Then the priſoners are called for by name, and bidden to aunſwere to their names. And when the *Cuſtos rotulorum* hath brought forth their enditements, the Judges doe name one or

two or three of the prisoners that are endicted, whom they will haue arraigned. There the clarke speaketh first to one of the prisoners: A. B. come to the barre, hold vp thy hand. The clarke goeth on: A. B. thou by the name of A. B. of such a towne, in such a countie, art endicted, that such a day, in such a place, thou hast stolen with force and armes an horse, which was such ones, of such a colour, to such a valor, and carried him away feloniously, & contrarie to the peace of our soueraigne Ladie the Quéene. What sayest thou to it, art thou guiltie or not guiltie? If he will not aunswere, or not aunswere direcly guiltie or not guiltie, after he hath béene once or twise so interrogated, he is iudged mute, that is dumme by contumacie, and his condemnation is to be pressed to death, which is one of the cruellest deathes that may be: he is laide vpon a table, and an other vpon him, and so much weight of stones or lead laide vpon that table, while as his bodie be crushed, and his life by that violence taken from him. This death some strong & stout hearted man doth chose, for being not condemned of felonie, his blood is not corrupted, his lands nor goods confiscate to the Prince, which in all cases of felonie are commonly lost from him and his heires, if he be foreiudged, that is condemned for a felon by the lawe. If he confesse the enditement to be true, then when he is arraigned, no xii. men goeth vpon him, there resteth but the Iudges sentence, of the paine of death.

If he pleade not guiltie, as commonly all théeues, robbers, & murtherers doe, though they haue confessed the fact before the Iustice of the peace that examined them, though they be taken with the maner, which in Latine they call *in flagranti crimine*, howsoeuer it bé, if he pleade there not guiltie, the Clarke asketh him howe he will be tryed, and telleth him he must saie, by God and the Countrie, for these be the wordes formall

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of this triall after Inditement, and where the Prince is partie: if the prisoner doe say so, I will be tryed by God and the Countrie, then the Clarke replyeth, Thou hast beene endicted of such a crime, &c. Thou hast pleaded not guiltie: being asked howe thou wilt be tryed, thou hast aunswered by God and by the Countrie. Loe these honest men that be come here, be in the place and stead of the Countrie: and if thou hast any thing to say to any of them, loke vpon them well and nowe speake, for thou standest vpon thy life and death. Then calleth he in the first Juror. B. C. come to the booke, and so giueth him an othe to goe vprightlie betwixt the Prince and the prisoner, &c. If the prisoner obiecteth nothing against him, he calleth an other, and so an other, till there be xii. or aboue: and for the most part the prisoner can say nothing against them, for they are chosen but for that day, and are vnknowen to him, nor they know not him, as I said being substantial yeomen, that dwell about the place, or at the least in the hundred, or neere where the felonie is supposed to be committed, men acquainted with daily labour and trauaile, and not with such idle persons, as be readie to doe such mischiefes.

When the enquest is full, and the prisoner hath obiected nothing against them, as in deede seldome he doeth, for the cause aboue rehearsed: The clarke saith to the cryer, countes, (in French as ye would say recken) and so nameth all those that be on the quest. The crier at euerie name cryeth aloude, one, then ii. iii. iiii. and so till the number be full of xii. or more, & then saith good men and true: and then saith aloude: If any can giue euidence, or can say any thing against the prisoner, let him come nowe, for he standeth vpon his deliuerance. If no man come in, then the Judge asketh who sent him to prison, who is commonly one of the Justices of peace. He if he be there deliuereth vp the

cramination which he toke of him, and vnderneath the names of those whom he hath bound to giue euidence, although the malefactor hath confessed the crime to the Iustice of the peace, and that appeare by his hande and confirmation, the xij. men will acquite the prisoner, but they which should giue euidence pay their recognizaunce. Howbeit this doth seldome chaunce, except it be in small matters, and where the Iustice of peace, who sent the prisoner to the gaole, is away. If they which be bound to giue euidence come in, first is read the cramination, which the Iustice of peace doeth giue in: then is heard (if he be there) the man robbed what he can say, being first sworne to say trueth, and after the Constable, and as many as were at the apprehension of the malefactor: and so many as can say any thing being sworne one after an other to say truth. These be set in such a place as they may see ẏ Iudges and the Iustices, the enquest and the prisoner, & heare them, and be heard of them all. The Iudge first after they be sworne, asketh first the partie robbed, if he knowe the prisoner, and biddeth him loke vpon him: he saith yea, the prisoner sometime saith nay. The partie pursuinaunt giueth good enlignes *verbi gratia*, I knowe thée well ynough, thou robbedst me in such a place, thou beatest mée, thou tokest my horse from mée, and my purse, thou hadst then such a coate and such a man in thy companie: the théefe will say no, and so they stand a while in altercation, then he telleth al that he can say: after him likewise all those who were at the apprehension of the prisoner, or who can giue any *indices* or tokens which we call in our language euidence against the malefactor. When the Iudge hath heard them say ynough, he asketh if they can say any more: if they say no, then he turneth his spéeche to the enquest. Good men (saith he) ye of the enquest, ye haue heard what these men say against the prisoner,

prisoner, you haue also heard what the prisoner can say for himselfe, haue an eye to your othe, and to your duetie, & doe that which God shall put in your mindes to the discharge of your consciences, and marke well what is saide. Thus sometime with one enquest is passed to the number of .v. or .iij. prisoners: For if they should be charged with more, the inquest will say, my Lorde, we pray you charge vs with no more, it is ynough for our memorie. Many times they are charged but with one or two. At their departing, they haue in writing nothing giuen them, but the enditement, the clarke repeating to them the effect of it, and shewing more, that if they finde him guiltie, they shall enquire what goods, landes, and tenementes, the saide person had at the time of the felonie committed: and if they finde any, they shall bring it in: if no, they shal say so. If they finde him not guiltie, they shall enquire whether he fled for the felonie or no.

And there is a bailife to waite vpon them, and to see that no man doe speake with them, and that they haue neither bread, drinke, meate, nor fire brought to them, but there to remaine in a chamber together till they agree. If they be in doubt of any thing that is saide, or would heare againe some of them that giue euidence to interrogate them more at full, or if any that can giue euidence come late: it is permitted that anie that is sworne to say the trueth, may be interrogated of them to enforme their consciences. This is to be vnderstood although it will seeme straunge to all nations that doe vse the ciuill Lawe of the Romane Emperours, that for life and death there is nothing put in writing but the enditement onely. All the rest is done openlie in the presence of the Iudges, the Iustices, the enquest, the prisoner, and so many as will or can come so neare as to heare it, and all depositions and witnesses giuen alowde, that all men may heare from the mouth of the

depoſitors and witneſſes what is ſaide. As of this, ſo is it of all other priſoners after ẏ ſame ſort. By that time that the enqueſtes for the priſoners be diſpatched, it is commonly dinner time, the Iudges and Iuſtices goe to dinner, and after dinner returne to the ſame place: if the enqueſt be not readie for the priſoners, they goe to ſome other enqueſts of *niſi prius*, which be ciuill matters and priuate to driue out the time. The enqueſtes haue no ſoner agreed vpon their charge one way or other, but they tell the Bailife, and pray to bee heard, and conſidering that they be themſelues all this while as priſoners as I ſaide before, it is no maruell, though they make expedition. The priſoners be ſent for againe to the barre, the enqueſt which hath agreed, is called for each one of the Iurie by his name, to which he anſwereth. Then the clarke aſketh if they be agreed, and who ſhall ſpeake for them. One or moe ſaith yea. He that ſpeaketh for them all is called the foreman, and commonlie it is he that is firſt ſworne: then the priſoner is bidden to holde vp his hande. The clarke ſaith vnto him, Thou art endicted by the name of A. of ſuch a place, &c. being therefore arraigned thou pleadeſt thereto not guiltie, being aſked howe thou would be tryed, thou ſaydſt by God and thy countrey. Theſe honeſt men were giuen to thee by God & thy Prince for thy Countrey: Hearken what they ſay. Then he aſketh of the enqueſt, what ſay you? Is he guiltie or not guiltie? The foreman maketh anſwere in one worde, guiltie, or in two, not guiltie: the one is deadlie, the other acquiteth the priſoner. So that neither Iudge nor Iuſtice hath to doe, or can reuerſe, alter or chaunge that matter, if they ſay guiltie. The clarke aſketh what landes, tenementes, or goods, the priſoner had at the time of the felonie committed, or at any time after. Commonlie it is anſwered that they knowe not, nor it ſhall not greatly nede, for the Sheriffe is diligent

diligent ynough to enquire of that, for the Princes and his owne aduantage, and so is the exchequer also.

Of him whom the xij. men pronounce guiltie, the Iudge asketh what he can say for himselfe: if he can reade, he demandeth his Clergie. For in many felonies, as in theft of oxen, sheepe, money, or other such thinges, which be no open robberies, by the high way side, nor assaulting one by night in his house, putting him that is there in feare, such is the fauour of our Lawe, that for the first fault the felon shalbe admitted to his Clergie, for which purpose the Bishop must send one with authoritie vnder his seale to be Iudge in that matter at euerie gaole deliuerie. If the condemned man demandeth to be admitted to his booke, the Iudge commonly giueth him a Psalter, and turneth to what place he will. The prisoner readeth as well as he can (God knoweth sometime verie slenderly:) then he asketh of the Bishops commissarie, *legit vt clericus?* The commissarie must say *legit* or *non legit*, for these be wordes formall, and our men of Lawe be verie precise in their wordes formall. If he say *legit*, the Iudge proceedeth no further to sentence of death: if he say *non*, the Iudge forthwith, or the next day proceedeth to sentence, which is donne by worde of mouth onelie: Thou A. hast beene endicted of such a felonie and thereof arraigned, thou hast pleaded not guiltie, and put thy selfe vpon God and thy Countrey, they haue found thee guiltie, thou hast nothing to say for thy selfe, the Lawe is, thou shalt first returne to the place from whence thou camest, from thence thou shalt goe to the place of execution, there thou shalt hang till thou be dead. Then he sayth to the Sherife, Sherife doe execution: he that claimeth his Clergie, is burned forthwith in the presence of the Iudges in the brawne of his hande with a hot yron marked with the letter T. for a theefe, or M. for a manslear, in cases where Clergie

gie is admitted, and is deliuered to the Bishops officer to be kept in the Bishops prison, from whence after a certaine time by an other enquest of Clarkes he is deliuered and let at large: but if he be taken and condemned the second time, and his marke espied, he goeth to hanging. He whom the enquest pronounceth not guiltie is acquitted forthwith and discharged of prison, paying the gaolers fees: and if hee knowe any priuate man who purchased his inditement, and is able to pursue it, he may haue an action of conspiracie against him, and a large amendes: but that case chanceth seldome.

The deliuerie to the Bishops prison, and the purgation is taken away by statute.

They must be two at the least that conspired.

Certaine orders peculiar to England, touching punishment of malefactors.

Chap. 24.

For anie felonie, manslaughter, robberie, murther, rape, and such capitall crimes as touch not treason & *læsam maiestatem*, we haue by the Lawe of Englande no other punishment, but to hang till they be dead: when they be dead, euerie man may burie them that will, as cõmonly they be. Heading, tormenting, demembring, either arme or legge, breaking vpon the wheele, empaling, & such cruell torments, as be vsed in other nations by the order of their law, we haue not: & yet as few murthers cõmitted as any where: nor it is not in the Iudges or the Iustices power, to aggrauate or mitigate the punishment of the Lawe, but in the Prince onely and his priuie Counsell, which is marueilous seldome done. Yet notable murtherers many times by the Princes commaundement, after they bee hanged with corde till they bee dead, bee hanged with chaines while they rotte in the ayre. If the wife kill her husbande, she shall bee burned aliue. If the ser-

seruaunt kill his master, hee shall bee drawen on a hurdle to the place of execution: it is called petit treason. Impoisoners, if the person die thereof, by a newe lawe made in king Henrie the eights time shalbe boyled to death: but this mischiefe is rare and almost vnknowen in England. Attempting to impoison a man, or laying awaite to kill a man, though he wound him daungerously, yet if death followe not, is no felonie by the lawe of Englande, for the Prince hath lost no man, and life ought to be giuen we say, but for life onely. And againe, when a man is murdered, all be principals and shall die, euen he that doth but hold the candel to giue light to the murderers. For mitigation and moderation of paines, is but corruption of Judges, as we thinke. Likewise, torment or question which is vsed by the order of the ciuill lawe and custome of other countries to put a malefactor to excessiue paine, to make him confesse of himselfe, or of his felowes or complices, is not vsed in England, it is taken for seruile. For what can he serue the common wealth after as a free man, who hath his bodie so haled and tormented, if he be not found guiltie, and what amends can be made him? And if he must die, what crueltie is it so to torment him before? Likewise, confession by torment is esteemed for nothing, for if he confesse at the indgement, the tryall of the rii goeth not vpon him: If he denie the fact, that which he saide before hindereth him not. The nature of English men is to neglect death, to abide no torment: And therefore he will confesse rather to haue done any thing, yea, to haue killed his own father, than to suffer torment, for death our natiõ doth not so much esteem as a meane tormẽt. In no place shal you see malefactors go more constantly, more assuredly, & with lesse lamentation to their death than in England. Againe, the people not accustomed to see such cruell torments, will pitie the person tormented, and

Quere.

abhorre the Prince and the Iudges, who should bring in such crueltie amongst them, and the xij. men the rather absolue him. There is an olde lawe of Englande, that if any gaoler shall put any prisoner being in his custodie to any torment, to the intent to make him an approuer, that is to say an accuser or *Index* of his complices, the gaoler shall die therefore as a felon. And to say the trueth, to what purpose is it to vse torment? For whether the malefactor confesse or no, and whatsoeuer he saith, if the enquest of xij. do find him guiltie, he dyeth therefore without delay. And the malefactor, seeing there is no remedie, and that they be his countriemen, and such as he hath himselfe agreed vnto it, doe finde him worthie death, yeldes for the most part vnto it, and doeth not repine, but doth accõmodate him selfe to aske mercie of God. The nature of our nation is free, stout, haulte, prodigall of life and bloud: but contumelie, beatings, seruitude and seruile torment & punishment it will not abide. So in this nature and fashion, our auncient Princes and legislators haue nourished them, as to make them stout hearted, courageous and souldiers, not villaines and slaues, and that is the scope almost of all our policie. The xij. as sone as they haue giuen their verdict are dismissed to goe whither they will, and haue no maner commoditie and profit of their labour and verdict, but onely doe seruice to the Prince and common wealth.

Of Treason, & the trial which is vsed for the higher nobilitie and Barons.

Chap. 25.

The same order touching triall by enquest of xij men is taken in Treason, but the paine is more cruell. First to be hanged, taken downe aliue, his bowels taken

hen out and burned before his face, then to be beheaded, and quartered, and those set vp in diuerse places. If anie Duke, Marques, or any other of the degrée of a Baron, or aboue, Lord of the Parliament be appeached of treason, or any other capitall crime, he is iudged by his peeres and equals: that is, the yeomanrie doth not go vpon him, but an enquest of the Lordes of the Parliament, and they giue their voice, not one for all, but eche seuerally as they doe in Parliament, beginning at the yongest Lord. And for Iudge one Lord sitteth, who is Constable of England for that day. The iudgement once giuen, he breaketh his staffe and abdicateth his office. In the rest there is no difference from that aboue written.

Or rather high steward of England.

THE THIRDE Booke.

Of that which in other countries is called *appellation*, or *prouocation*, to amend the iudgement or sentence definitiue, which is thought vniustly giuen in causes criminall.

Chap. 1.

If the enquest of xii men do seeme to the Iudges & the Iustices to haue gone too violently against the euidence giuen in matters criminall, either it is that vpon slender euidence they haue pronounced him giltie, whō the Iudges & most part

of the Iuſtices thinkes by the euidence not fullie proued guiltie, or for ſome other cauſe, doe thinke the perſon rather worthie to liue than to die. The enqueſt is neuertheleſſe dimiſſed: but when the Iudges ſhould pronounce the ſentence of death vpon the perſon found guiltie, he will differ it, which is called to repriue the priſoner (that is to ſay to ſende him againe to priſon) and ſo declare the matter to the Prince, and obtaineth after a time for the priſoner his pardon: and as for pronocation or appeale which is vſed ſo much in other countries, it hath no place in Englande, after ſentence giuen by the xii, whereby the perſon is founde guiltie or not guiltie: but without that repriuing the ſentence is ſtreight put in execution by the ſherife. And if they either eſcape or die another death, the ſherife eſcapeth not to paie a great fine and ranſom at the Princes mercie: if hauing pregnant euidence neuertheleſſe the xii doe acquite the malefactor, which they will doe ſometime, and eſpecially if they perceiue either one of the Iuſtices, or of the Iudges, or ſome other man to purſue too much and too malitiouſly the death of the priſoner, and do ſuſpect ſome ſubornation of the witneſſe, or them which doe giue euidence, and ſometime if they perceiue the Iudge would haue the priſoner eſcape, and in repeating the euidence doe giue them thereof ſome watchworde. But if they doe (as I haue ſaide), pronounce not guiltie vpon the priſoner againſt whome manifeſt witneſſe is brought in, the priſoner eſcapeth: but the xii not onely be rebuked by the Iudges, but alſo threatned of puniſhment, and many times commaunded to appeare in the ſtarrechamber, or before the priuie counſell for the matter. But this threatening chaunceth oftener than the execution thereof, and the xii anſwere with moſt gentle wordes, they did it according to their conſciences, and pray the Iudges to be good vnto them, they did as they thought right, and as they

they accorded all, and so it passeth alway for the most part. Yet I haue seene in my time (but not in the raigne of the Quéene nowe) that an enquest for pronouncing one not guiltie of treason contrarie to such euidence as was brought in, were not onely imprisoned for a space, but an hounge fine set vpon their heads, which they were faine to pay: An other enquest for acquiting an other, beside paying a fine of money, put to open ignominie and shame. But those doinges were euen then of many accounted verie violent, tyrannicall, and contrarie to the libertie and custome of the realme of Englande. Wherefore it commeth verie seldome in vse, yet so much at a time the enquest may be corrupted, that the Prince may haue cause with iustice to punish them: For they are men, and subiect to corruption and partialitie, as others be.

What remedie is, if the sentence be thought vniustly giuen.

Chap. 2.

In causes ciuill there is an other order: for if after the matter be pleaded to the issue, and the xij men thereupon impaneled, the euidence brought and pleaded before them on both the parties, the xij seeme to be partiall, and to haue giuen sentence contrarie to the euidence shewed vnto them: the partie greeued may bring against them, and the partie for whome the sentence is giuen, a writ of attaint: and where as before vpon the first quest commonly they all be yeomen, now vppon this attaint must goe xxiiij gentlemen dwelling within the shire, and xij at the least of the hundreth where the lande lyeth. The matter is pleaded againe before the same Iudges. The partie defendant is not onely nowe he, who claimeth the lande, but also all

and euerie of the yeomen, who by their verdict did giue it him. There must in the attaint no more euidence be brought in, but onely that which was brought in, and alledged before the first enquest. And if this seconde enquest of xviiij gentlemen doe adiudge as the first did, the plaintife shall not onely lose the lande, but also paie a fine to the Prince and damages to the partie. If this seconde enquest doe finde that the first enquest hath gone partiallie, and against the euidence brought in before them, the first enquest is called attainted, and accounted as periured and infamed. The Prince had before the waste of all their landes and possessions with other punishments, which at this present by a lawe made by parliament in the time of king Henrie the eight is abolished, and nowe by that law or act of parliament, beside other punishment, each of the quest attainted payeth vnto the Prince and partie v. li. if it be vnder fourtie poundes: and if aboue, then xx. li. Attaints be verie seldome put in vre, partly because the gentlemen will not meete to slaunder and deface the honest yeomen their neighbours: so that of a long time, they had rather pay a meane fine than to appeare and make the enquest. And in the meane time they will intreate so much as in them lyeth the parties to come to some composition and agreement among them selues, as lightly they doe, except either the corruption of the enquest be to euident, or the one partie is to obstinate and headstrong. And if the gentlemen do appeare, gladlyer they will confirme the first sentence, for the causes which I haue saide, than go against it. But if the corruption be to much euident, they will not sticke to attaint the first enquest: yet after the gentlemen haue attainted the yeomen, if before the sentence be giuen by the Iudge (which ordinarily for a time is differred) the parties be agreed, or one of them be dead, the attaint ceaseth.

No more euidence on the behalfe of the plaintife, but of the defendant there may.

The statute of 23. Henrie 8. doth not abolish common lawe, but giueth a more profitable for the plaintife.

If

If at anie time before the sentence be giuen or put in execution, there be founde some such errour in the writ, in the proces, or forme (as our lawyers be verie precise and curious of their formes) that it may be reuocable, it is brought afresh to the disputation by a writ of errour, and all that is done reuersed. But that is common to all other countries, where the ciuill lawe is vsed, which they call *de nullitate processus*, and serueth both in Englande and in other places aswell in causes criminall, as ciuill. Other kinde of appeilation to reuoke processes, and to make them of short, long, of long, infinite, which is vsed by the ciuill lawe, we haue not in our common lawe of Englande. By supplication to the Prince and complaint to the Chauncellor vpon suppofall of losse or lacke of euidence, or too much fauour in the countrey, and power of the aduersarie, there is in our countrey as well as theirs both stopping and prolongation of Iustice. For what will not busie heades and louers of trouble neuer being satisfied inuent in anie countrey to haue their desire, which is to vere their neighbours, and to liue alwaies in disquiet? Men euen permitted of God like flies, and lise, and other vermine to disquiet them, who would imploie themselues vppon better businesse and more necessarie for the common wealth: these men are hated, and feared of their neighbours, loued and aided of them which gaine by proces, and ware fatte by the expence & trouble of other. But as these men ordinarily spende their owne thrift, and make others against their wils to spende theirs: so sometime being throughly knowen, they do not onely liue by the losse like euill husbandes, but beside rebuke & shame, by the equitie of the Prince and courtes soueraigne, they come to be extraordinarily punished, both corporally, & by their purse, which thing in my minde is as royall and princely an act, and so beneficiall to the commonwealth, as in so small a

matter a King or a Quæne can doe, for the repose and good education of their subiectes.

Of that which in England is called appeale, in other places accusation.

Chap. 3.

IF any man hath killed my father, my sonne, my wife, my brother, or next kinsman, I haue choice to cause him to be endicted, by giuing information to the enquest of enquirie, (although he chaunce to escape the Constable or Justices handes, and therefore not to be apprehended) and thereupon to procure him to be outlawed, or else within a yeare and a day I may enter my appeale, that is mine accusation against him. If I began first to pursue him by information or denunciation to enditement, I am nowe no partie but the Prince, who for his duetie to God and his common wealth and subiectes, must see iustice executed against all malefactors & offenders against the peace, which is called Gods and his, and doth in such maner as I haue saide before. If I leaue that and will appeale, which is profer my accusation against him who hath done to me this iniurie, the defendant hath this aduauntage to put himselfe to the Jurie, which is to that which before is saide to haue that issue and triall by God and his countrie, whereof the fashion I haue at large declared: or to demaunde the triall by battle, wherein both the parties must either themselues in person, or else finde other for them, who be called in our Lawe Champions or Campions, some doeth interprete them *aduersi*, because they be men chosen, fat, lustie, fit to the feate, or as the French doe terme them adroicts aux armis, which shall fight it out by *μονομαχία*, or as nowe they doe call it *duellum*, or the campe, which shall haue all things equall: but according as Mars giueth the victorie,

In appeale the battle is tryed by the parties onely, and in writ of right by champions.

rie, so the Lawe is iudged the one as *peractus reus*, the other is *calumniator* to suffer the paine of death. So that by the great assise there is no appellation but death or life to the defendant, but this is more daungerous and equall, for the one or the other must die. So it is not in the grande assise, for the *reus* or defendaunt is onely in daunger of death. Short it is from day to sunne set, the quarell is ended, or swner who hath the better fortune. This seemeth verie militarie (as in maner all our policie of Englande) and to haue as small to doe with Lawyers as with Phisitions, quicklie to dispatche, and for the rest to returne, eche man to his busines, to serue the common wealth in his vocation. The Popes of Rome, and men of the Church who of long time haue had dominion in our consciences, and would bring things to a more moderation, haue much detested this kinde of triall and iudgement, as reason is euerie man misliketh that which is not like to his education, and colde reasoning by Theologie and Philosophie: they I say much mislike many things done necessarily in whot policie. At the least a common wealth militarie must aduenture many things to kepe it in quiet, which cannot seeme so precisely good to them which dispute thereof in the shadowe and in their studies: Howsoeuer it be, this kinde of triall of long time hath not beene vsed. So that at this time we may rather seeke the experience of it out of our histories of time passed, than of any viewe or sight thereof, of them which are nowe aliue. Nevertheless the Lawe remaineth still, and is not abolished, and if it shall chaunce the murtherer or manslear (the one we call him that lyeth in waite, and as they terme it in Frenche de guet appendaunt killeth the man, the other who by casuall falling out and soudaine debate and choler doeth the same which way soeuer it be done) if he that hath slaine the man, hath his

his pardon of the prince, as occasion or the fauour of the Prince may so present, ỳ he may haue it, yet the partie grieued hath these two remedies, I say to require iustice by grand assise, or battle vpon his appeale & priuate reuenge, which is not denyed him. And if the defendant either by great assise or by battle be conuinced vpon that appeale, he shall die, notwithstanding the Princes pardon. So much fauourable our Princes be, and the Lawe of our Realme to iustice and to the punishment of blod violently shed.

The battle or Iurie is at the election of the defendant

Of the Court of Starre Chamber.

Chap. 4.

There is yet in Englande an other court, of the which that I can understand there is not the like in any other Countrie. In the Terme time (the Terme time as I haue heretofore shewed, I call the time and those dates when the Lawe is exercised in Westminster hall, which as I haue saide as but at certaine times and termes) euery weeke once at the least, (which is commonly on Fridaies, and Wednesdaies, and the next day after that the Terme doth ende,) the Lordes Chauncellor, and the Lordes and other of the priuie Counsell, so many as will, and other Lordes and Barons which be not of the priuie Counsell, and be in the towne, and the Iudges of England, specially the two chiefe Iudges, from ix. of the cloche till it be xi. dos sit in a place which is called the starrechamber, either because it is full of windowes, or because at the first all the rofe thereof was decked with images of starres gilted. There is plaints heard of riots. Riot is called in our English terme or speathe, where any number is assembled with force to doo any thing: and it had the beginning, because that our being much accu-

stomed

ſtomed either in forreine wars, in Fraunce, Scotland, or Irelande, or being ouermuch exercised with ciuill warres within the Realme (which is the fault that falleth ordinarily amongeſt bellicous nations) whereby men of warre, Captaines and ſouldiers become plentifull: which when they haue no externe ſeruice wherewith to occupie their buſie heads and hands accuſtomed to fight and quarell, muſt nedes ſette quarels and contentions amongeſt themſelues, and become ſo readie to oppreſſe right among their neighbours, as they were wont before with praiſe of manhode, to be in reſiſting iniurie offered by their enemies. So that our nation vſed hereunto, and vpon that more inſolent at home, and not eaſie to be gouerned by Lawe and politike order, men of power beginning many fraies, and the ſtronger by factions and parties offering too much iniurie to the weaker, were occaſions of making good Lawes. Firſt of reteiners, that no man ſhould haue aboue a number in his Liuerie or retinue: then of the enquirie of routs and riots at euerie Seſſions, and of the lawe whereby it is prouided that if any by force or by riot enter vpon any poſſeſſions, the Juſtices of the peace ſhal aſſemble themſelues & remoue the force, & within certaine time enquire thereof. And further, becauſe ſuch things are not commonlie done by meane men, but ſuch as be of power and force, & be not to be dealt withal of euerie man, nor of meane Gentlemen: if the riot be found & certified to the Kings Counſell, or if otherwiſe it be complained of, the partie is ſent for, and he muſt appeare in this ſtarre chamber, where ſeing (except the preſence of the Prince onely) as it were the maieſtie of the whole Realme before him, being neuer ſo ſtoute, he will be abaſhed: and being called to anſwere (as he muſt come of what degree ſoeuer he be) he ſhall be ſo charged with ſuch grauitie, with ſuch reaſon & remonſtrance,

Sent for by *Subpœna.*

and of those chiefe personages of Englande, one after an other handeling him on that sort, that what courage soeuer he hath, his heart will fall to the grounde, and so much the more, when if he make not his aunswere the better, as seldome he can so in open violence, he shalbe commaunded to the Fleete, where he shall be kept in prison in such sort as these Iudges shall appoint him, lie there till he be wearie aswell of the restraint of his libertie, as of the great expences, which he must there sustaine, and for a time be forgotten, whiles after long suite of his friendes, he will be glad to be ordered by reason. Sometime as his deserts be, he payeth a great fine to the Prince, besides great costs and dammages to the partie, and yet the matter wherefore he attempteth this riot and violence is remitted to the common Lawe. For that is the effect of this Court to bridle such stout noble men, or Gentlemen which would offer wrong by force to any manner men, and cannot be content to demaund or defend the right by order of Lawe. This court began long before, but toke great augmentation and authoritie at that time that Cardinall Wolley Archebishop of Yorke was Chauncellor of Englande, who of some was thought to haue first deuised ỳ Court, because that he after some intermission by negligence of time, augmented the authoritie of it, which was at that time marueilous necessary to doe, to represse the insolencie of the noble men and Gentlemen of the North partes of Englande, who being farre from the King and the seate of iustice made almost as it were an ordinarie warre among themselues, and made their force their Lawe, banding themselues with their tenaunts and seruaunts to doe or reuenge iniurie one against an other as they listed. This thing seemed not supportable to the noble prince King Henrie the eight, and sending for them one after another to his Court to aunswere

before

before the persons before named, after they had had remonstrance shewed them of their euill demeanor, and beene well disciplined as well by wordes as by fleeting a while, and thereby their purse and courage somwhat asswaged, they began to range themselues in order, and to vnderstande that they had a Prince who would rule his subiectes by his lawes and obedience. With that time this court hath beene in more estimation, and is continued to this day in manner as I haue sayde before.

Of the Courts of Wards and Liueries.

Chap. 5.

He whom we call a warde in Englande, is called in Latine *pupillus*, and in Greeke ἀφωνος. The gardian is called in Latine *tutor*, in Greeke ἐπίτροπος. A warde or infant is taken for a childe in base age, whose father is dead. The Romanes made two distinctions *pupillum & minorem*, the one to xiiij. yere old, the other was accounted from thence to xxv. And as *pupillus* had *tutorem*, so *minor* had *curatorem* till he came to the age of xxv. These tutors or curators were accountable for the reuenues of the pupils minors lands, & great prouision and many lawes and orders is made for them in the bookes of the ciuill Lawe, for rendering iust & true accounts. So that to be a gardian or tutor was accounted among them to be a charge or trouble, a thing subiect to much encumbrance and small profits, so that diuerse meanes were sought for, to excuse men from it. With vs this is cleane contrarie, for it is reckened a profite to haue a warde. For the Lorde of whom the warde doeth holde the lande, so soone as by the death of the father the childe falleth warde vnto him, he seaseth vpon the body of the ward and his landes, of which (so that he doeth nourish the warde,) he taketh the profits without ac-

counts, and beside that offering to his warde conuenable mariage without dispergement before the age of xxi. yeres if it be a man, of xiiij. if it be a woman. If the warde refuse to take that mariage, he or she must pay the value of the mariage, which is commonly rated according to the profite of his landes. All this while I speake of that which is called in French garde noble, that is of such as holde lands of other, by knight seruice, for that is an other kinde of seruice which we call in French gard roturier, we call it gard in socage, that is of such as doe not holde by knight seruice, but by tenure of the plough. This wardship falleth to him who is next of the kinne, and cannot inherite the land of the warde as the vncle by the mothers side, if the land doe discend by the father, and of the fathers side, if the lande discend by the mother. This gardian is accountable for the reuenues and profites of the lande, as the tutor by the ciuill Lawe to the warde or pupill so sone as he is of full age.

Gardian in chiualrie, and gardian in Socage.

The man is not out of wardshippe by our lawe till xxi. yere olde, from thence he is reckoned of full age, as well as in the Romane lawes at xxv. The woman at xiiij. is out of warde, for she may haue an husbande able to doe knightes seruice say our bookes. And because our wiues be in the power (as I shall tell you hereafter) of their husbands, it is no reason, she should be in two diuerse gards.

Many men doe esteme this wardship by knightes seruice verie vnreasonable and vniust, and contrarie to nature, that a Freeman and Gentleman should be bought and solde like an horse or an oxe, and so change gardians as maisters and lordes: at whose gouernement not onely his bodie, but his landes and his houses should be, to be wasted and spent without accountes, and then to marie at the will of him, who is his naturall Lorde, or his will who hath bought him, to such as he

he like not peraduenture, or else to pay so great a ransome. This is the occasion they say, why many gentlemen be so euill brought vp touching vertue and learning, and but onely in deintinesse and pleasure: and why they be maried verie young and before they bee wise, and many times do not greatly loue their wiues. For when the father is dead, who hath the naturall care of his childe, not the mother, nor the vncle, nor the nert of kinne, who by all reason would haue most naturall care to the bringing vp of the infant and *minor*, but the Lorde of whom he holdeth his land in knights seruice, be it the King or Quéene, Duke, Marquesse, or any other, hath the gouernement of his bodie and mariage, or else who that bought him at the first, seconde or thirde hande. The Prince as hauing so many, must nedes giue or sell his wardes away to other, and so he doeth. Other doe but séeke which way they may make most aduauntage of him, as of an ore or other beast. These all (say they,) haue no naturall care of the infant, but of their owne gaine, and especially the buyer will not suffer his warde to take any great paines, either in studie, or any other hardenesse, least he should be sicke and die, before he hath maried his daughter, sister or cousin, for whose sake hee bought him: and then all his money which he paide for him should be lost. So he, who had a father, which kept a good house, and had all thinges in order to maintaine it, shall come to his owne, after he is out of wardshippe, woods decayed, houses fallen downe, stocke wasted and gone, lande let forth and plowed to the baren, and to make amends, shall pay yet one yeares rent for relefe and sue ouster le maind, beside other charges, so that not of manie yeres and peraduenture neuer he shall be able to recouer, and come to the estate where his father left it. This as it is thought was first graunted vpon a great extremitie to King Henrie the 3. for a time

But the Lorde shalbe punished for the wast, by losse of the ward or treble dammages, if that suffice not.

vpon the warre which he had with his Barons, and afterwarde increased, and multiplied to more and more persons and grieuances, and will be the decay of the nobilitie and libertie of Englande. Other againe say, the warde hath no wrong. For either his father purchased the lande, or it did discende vnto him from his auncestors with this charge. And because he holdeth by knightes seruice, which is in armes and defence, seeing that by age he cannot doe that whereto hee is bound by his lande, it is reason he aunswere that profite to the Lorde, whereby he may haue as able a man to doe the seruice. The first knightes in Rome, those that were chosen *equites Romani*, had *equum publicum* on which they serued, and that was at the charge of widowes and wardes, as appeareth by Titus Liuius, because that those persons could not doe bodilie seruice to the common wealth. Wherefore this is no new thing, but thought reasonable in that most wise common wealth, and to the prudent King Seruius Tullius. As for the education of our common wealth, it was at the first militaire, and almost in all thinges the scope and designe thereof is militaire. Yet was it thought most like, that noble men, good knightes, and great captaines would bring vp their wardes in their owne feates and vertues, and then mary them into like race and stocke where they may finde and make friendes, who can better looke to the education or better skill of the bringing vp of a gentleman, than he who for his higher nobilitie hath such a one to holde of him by knights seruice, or would doe it better than he that looketh or may claime such seruice of his ward, when age and peres will make him able to doe it. That which is saide that this maner of wardship began in the time of King Henrie the 3. cannot seeme true. For in Normandie and other places of Fraunce the same order is.

An

And that statute made in King Henrie the thirds time touching wards, to him that will wey it wel, may seeme rather a qualification of that matter, and an argument that the fashion of wardship was long before: but of this matter an other time shall be more conuenient to dispute. This may suffice to declare the maner of it.

Of Wiues and mariages.

Chap. 6.

The wiues in Englande be as I saide *in potestate maritorum*, not that the husbande hath *vitæ ac necis potestatem*, as the Romans had in the olde time of their children, for that is onely in the power of the Prince, and his lawes, as I haue saide before, but that whatsoeuer they haue before mariage, as sone as mariage is solemnished is their husbandes, I meane of money, plate, iuelles, cattaile, and generally all moueables. For as for lande and heritage followeth the succession, and is ordered by the Lawe as I shall say hereafter: and whatsoeuer they gette after mariage, they get to their husbands. They neither can giue nor sell anie thing either of their husbandes, or their owne. Theirs no moueable thing is by the lawe of England *constante matrimonio*, but as *peculium seruis aut filiy familias*: and yet in moueables at the death of her husbande she can claime nothing, but according as he shall will by his Testament, no more than his sonne can: all the rest is in the disposition of the executors if he die testate. Yet in London and other great Cities they haue that Lawe and custome, that when a man dieth, his goods be diuided into three partes. One thirde is imployed vpon the buriall and the bequestes which the testator maketh in his testament. An other thirde part the wife

hath as her right, and the thirde third part is the dewe and right of his childzen, equally to be diuided among them. So that a man there can make testament but of one thirde of his goods: if he die intestate, the funerals deducted the goods be equally diuided betwæne the wife and the childzen.

By the common lawe of Englande if a man die intestate, the Ordinarie (which is the Bishoppe by common intendment) sometime the Archdeacon, Deane, or Prebendarie by priuiledge and prescription, doeth commit the administration of the goods to the widowe or the child, or nert kinsman of the dead, appointing out portions to such as naturally it belongeth vnto, and the Ordinarie by cõmon vnderstanding hath such granitie and discretion as shalbe mæte for so absolute an authoritie for the most part, following such diuision as is vsed in London, either by thirdes or halfes. Our forefathers newelie conuerted to the Christian faith had such confidence in their pastors and instructors, and toke them to be men of such conscience that they committed that matter to their discretion, and belike at the first they were such as would sæke no priuate profit to themselues thereby, that being once so ordeined hath still so continued. The abuse which hath followed was in part redressed by certaine actes of parliament made in the time of King Henrie the eight, touching the probate of testamentes committing of administration & mortuaries. But to turne to the matter which we nowe haue in hande, the wife is so much in the power of her husband, that not onely her goods by marriage are streight made her husbandes, and she loseth all her administration which she had of them: but also where all English men haue name and surname, as the Romans had, Marcus Tullius, Caius Pompeius, Caius Iulius, whereof the name is giuen to vs at the font, the surname is the name of the gentilitie and stocke

ſtocke which the ſonne doeth take of the father alwaies, as the olde Romans did, our daughters ſo ſone as they be maried loſe the ſurname of their father, and of the family and ſtocke whereof they doe come, and take the ſurname of their huſbands, as tranſplanted from their familie into another. So that if my wife was called before Philippe Wilford by her owne name and her fathers ſurname, ſo ſone as ſhe is maried to me ſhe is no more called Philippe Wilford, but Philippe Smith, and ſo muſt ſhe write and ſigne: and as ſhe chaungeth huſbandes, ſo ſhe chaungeth ſurnames, called alwaies by the ſurname of her laſt huſbande. Yet if a woman once marrie a Lorde or a Knight, by which occaſion ſhe is called my Ladie with the ſurname of her huſbande, if he die and ſhe take a huſbande of a meaner eſtate by whom ſhe ſhall not be called Ladie (ſuch is the honour we doe giue to women) ſhe ſhall ſtill be called Ladie with the ſurname of her firſt huſbande and not of the ſeconde.

Yet ſhe is no Ladie by the common law, although ſo called of courteſie.

I thinke among the olde Romans thoſe marriages which were made *per coemptionem in manum*, and *per as* and *libram* made the wife *in manu & poteſtate viri*, wherof alſo we had in our olde lawe and ceremonies of mariage, a certaine memorie as a viewe and *veſtigium*. For the woman at the Church doore was giuen of the father or ſome other man next of her kinne into the handes of the huſbande, and he layde downe golde and ſiluer for her upon the booke, as though he did buy her, the prieſt belike was in ſtede of Libripens: our mariages be eſteemed perfect by the law of Englande, when they be ſolemniſhed in the Church or Chappell, in the preſence of the prieſt and other witneſſes. And this only maketh both the huſbande and the wife capable of all the benefites which our lawe doth giue vnto them and their lawefull children. In ſo much that if I marie the widowe of one lately dead, which at the time

of her husbandes death was with childe, if the childe be borne after mariage solemnished with me, this childe shalbe my heire, and is accounted my lawefull sonne, not his whose childe it is in deede, so precisely we doe take the letter where it is saide, *pater est quem nuptiæ demonstrant*. Those waies and meanes which Iustinian doeth declare to make bastardes to be lawefull children, muliers or rather melieurs (for such a terme our lawe vseth for them which be lawefull children) be of no effect in England, neither the Pope nor Emperour, nor the Prince himselfe neuer could there legittimate a bastarde to enioy any benefite of our Lawe, the parliament hath onely that power.

Although the wife be (as I haue written before) *in manu & potestate mariti*, by our Lawe yet they be not kept so streit as in mew and with a gard as they be in Italy and Spaine, but haue almost as much libertie as in Fraunce, and they haue for the most part all the charge of the house and houshold (as it may appeare by Aristotle and Plato the wiues of the Grækes had in their time) which is in deede the naturall occupation, exercise, office and part of a wife. The husband to meddle with the defence either by lawe or force, and with all forren matters which is the naturall part and office of the man, as I haue written before. And although our Lawe may seeme somewhat rigorous toward the wiues, yet for the most part they can handle their husbandes so well and so doulcely, and specially when their husbands be sicke: that where the Lawe gineth them nothing, their husbandes at their death of their good will giue them all. And if we there be that be not made at the death of their husbandes either sole or chiefe executrices of his last will and testament, and haue for the most part the gouernement of the children and their portions: except true in London, where a peculiar order is taken by the citie much after the fa-

ſhion of the ciuill lawe.

All this while I haue ſpoken onely of moueable goods: if the wife be an enheretrix & bring lande with her to the mariage, that lande deſcendeth to her eldeſt ſonne, or is diuided among her daughters. Also the manner is, that the lande which the wife bringeth to the mariage or purchaſeth afterwardes, the huſbande can not ſell nor alienate the ſame, no not with her conſent, nor ſhe her ſelfe during the mariage, except that ſhe be ſole examined by a Iudge at the common lawe: and if he haue no childe by her and ſhe die, the lande goeth to her next heires at the common lawe: but if in the mariage hee haue a childe by her, which is hearde once to crie, whether the childe liue or die, the huſbande ſhall haue the vſufruite of her landes, (that is the profitte of them during his life) and that is called the courtiſie of Englande.

It is auoidable after the husbandes death, except it be for xxi. yeares or three liues according to the ſtatute, or except they leuie a fine.

Likewiſe if the huſbande haue any lande either by inheritance deſcended or purchaſed and bought, if hee die before the wife, ſhe ſhall haue the vſufruite of one thirde part of his landes. That is, ſhe ſhall holde the one thirde part of his landes during her life as her dowrie, whether he hath childe by her or no. If he hath any children, the reſt deſcendeth ſtreight to the eldeſt: if he hath none, to the next heire at the common lawe: and if ſhe miſlike the diuiſion, ſhe ſhal aſke to be indowed of the fairеſt of his landes to the thirde part.

This which I haue written touching mariage and the right in moueables and vnmoueables which commeth thereby, is to be vnderſtode by the common lawe when no priuate contract is more particularly made. If there be any priuate pacts, couenants, and contracts made before the mariage betwixt the huſbande and the wife, by theſelues, by their parents, or their friends, thoſe haue force and be kept according to the firmitie and ſtrength in which they are made. And this is y-

nough of wines and mariage.

Of Children.

Chap. 7.

Our children be not *in potestate parentum*, as the children of the Romans were: but as soone as they be *puberes*, which we call the age of discretion, before that time nature doth tell they be but as it were *partes parentum*. That which is theirs they may giue or sell, and purchase to themselues either lands and other moueables the father hauing nothing to doe therewith. And therefore *emancipatio* is cleane superfluous, we knowe not what it is. Likewise *sui hæredes* complaints, *de inofficioso testamento* or *præteritorum liberorum non emancipatorum* haue no effect nor vse in our lawe, nor we haue no manner to make lawefull children but by mariage, and therefore we knowe not what is *adoptio* nor *arrogatio*. The testator disposeth in his last will his moueable goods freely as he thinketh meete and conuenient without controlement of wife or children. And our testamentes for goods moueable bee not subiect to the ceremonies of the ciuill lawe, but made with all libertie and freedome, and *iure militari*. Of landes as ye haue vnderstoode before, there is difference: for when the owner dieth, his lande discendeth onely to his eldest sonne, all the rest both sonnes and daughters haue nothing by the common lawe, but must serue their eldest brother if they will, or make what other shift they can to liue: except that the father in life time doe make some conueiance and estates of part of his land, to their vse, or else by deuise, which word amongst our lawiers doth betoken a testament written, sealed and deliuered in the life time of the testator before witnesse: for without those ceremonies a bequest of landes is not

auaſlable. But by the common lawe if he that dieth hath no ſonnes but daughters, the lande is equally diuided among them, which portion is made by agrément or by lotte. Although (as I haue ſayde) ordinarily and by the common lawe, the eldeſt ſonne inheriteth all the landes, yet in ſome countryes all the ſonnes haue equall portion, and that is called gauelkinde, and is in many places in Kent. In ſome places the youngeſt is ſole heire: and in ſome places after an other faſhion. But theſe bring but particular cuſtomes of certaine places and out of the rule of the common law, doe litle appertain to the diſputation of the policie of the whole Realme, and may be infinite. The common wealth is iudged by that which is moſt ordinarily and commonly done through the whole Realme.

Of Bondage and Bondmen.

Chap. 8.

After that we haue ſpoken of all the ſortes of freemen according to the diuerſitie of their eſtates and perſons, it reſteth to ſay ſomewhat of bondmen which were called *ſerui*, which kinde of people & the diſpoſition of them and about them doeth occupie the moſt part of Iuſtinians Digeſtes, and Code. The Romans had two kindes of bondmen, the one which were called *ſerui*, and they were either which were bought for money, taken in warre, left by ſucceſſion, or purchaſed by other kinde and lawefull acquiſition, or elſe borne of their bonde women and called *verna*: all thoſe kinde of bondmen be called in our lawe villens in groſſe, as ye would ſay immediatly bonde to the perſon and his heires. An other they had (as appeareth in Iuſtinians time), which they called *adſcripticij glebæ* or *agricenſiti*. Theſe were not bond to the perſon, but to the manno*r*

or place, and did followe him who had the manors, and in our lawe are called villaines regardantes, for because they be as members, or belonging to the manor or place. Neither of the one sort nor of the other haue we any number in Englande. And of the first I neuer knewe any in the realme in my time: of the seconde so fewe there be, that it is not almost worth the speaking. But our lawe doth acknowledge them in both those sortes. Manumission of all kinde of villaines or bondmen in Englande is vsed and done after diuerse sortes, and by other and more light and easie meanes than is prescribed in the ciuill lawe, and being once manumitted, he is not *libertus manumittentis*, but simply *liber*: howbeit sith our Realme hath receiued the Christian religion which maketh vs all in Christ brethren, and in respect of God and Christ *conseruos*, men began to haue conscience to holde in captiuitie and such extreme bondage him whome they must acknowledge to be his brother, and as we vse to terme him Christian, that is who loketh in Christ and by Christ to haue equall portion with them in the Gospell and saluation. Vpon this scruple, in continuance of time, and by long succession, the holie fathers, Munkes and Friers in their confession, and specially in their extreme & deadly sicknesses, burdened the consciences of them whome they had vnder their handes: so that temporall men by little and little by reason of that terror in their conscience, were glad to manumit all their villaines: but the said holie fathers, with the Abbots and Priors, did not in like sort by theirs, for they had also conscience to impouerish and dispoyle the Churches so much as to manumit such as were bond to their Churches, or to the mannors which the Church had gotten, and so kept theirs still. The same did the Bishoppes also till at the last and nowe of late some Bishoppes to make a pece of money manumitted theirs partly for argent, partly for slaun-

slaunders, that they seemed more cruel than the temporaltie: after the monasteries comming into temporall mens handes haue bene occasion that now they be almost all manumitted. The most part of bondmen when they were, yet were not vsed with vs so cruelly nor in that sort as the bondmen at the Romane ciuill law, as appeareth by their Comedies, nor as in Greece as appeareth by theirs: but they were suffered to enioie coppieholde lande to gaine and get as other serues that nowe and then their Lordes might fleese them and take a peece of money of them, as in France the Lordes doe taile them, whom they call their subiectes at their pleasure, and cause them to pay such summes of money as they list to put vpon them. I thinke both in Fraunce and England the chaunge of religion to a more gentle, humane and more equall sort (as the Christian religion is in respect of the Gentiles) caused this olde kinde of seruile seruitude and slauerie to be brought into that moderation, for necessitie first to villaines regardants, and after to seruitude of landes and tenures, and by litle and litle finding out more ciuill and gentle meanes and more equall to haue that done which in time of heathenesse seruitude or bondage did, they almost extinguished the whole. For although all persons christians be brethren by baptisme in Iesu Christ, and therefore may appeare equally free: yet some were and still might be christianed being bond and serue, and whom as the baptisme did finde so it did leaue them, for it chaungeth not ciuill lawes nor compactes amongest men which be not contrarie to Gods lawes, but rather maintaineth them by obedience. Which seeing men of good conscience hauing that scruple whereof I wrote before, haue by litle and litle found meanes to haue and obtaine the profit of seruitude and bondage which gentilitie did vse and is vsed to this day amongest Christians on the one part, and Turkes and Gentils on the

other part, whē warre is betwixt them vpon those whō they take in battaile. Turkes and Gentiles I call them, which vsing not our Lawe the one beleeueth in one God, the other in many gods, of whom they make Images. For the Lawe of Iewes is well ynough knowen, & at this day so farre as I can learne, amongst all people Iewes be holden as it were in a common seruitude, and haue no rule nor dominion as their own prophesies doe tell that they should not haue, after that Christ promised to them, was of them refused: for when they would not acknowledge him, obstinatly forsaking their helpe in soule for the life to come and honour in this world for the time present, not taking the good tidinges, newes, and Euangell brought to them by the great grace of God, and by the promise of the Prophets fructified in vs which be Gentils & brought forth this humanitie, gentlenesse, honour and godlie knowledge which is seene at this present. But to returne to the purpose.

This perswasion I say of Christians not to make nor kepe his brother in Christ, seruile, bonde and vnderling for euer vnto him, as a beast rather than as a man, and the humanitie which the Christian religion doeth teach, hath engendred through Realmes (not neere to Turkes and Barbarians), a doubt, a conscience and scruple to haue seruants and bondmen: yet necessitie on both sides, of the one to haue helpe, on the other to haue seruice, hath kept a figure or fashion thereof. So that some would not haue bondmen, but *adscripticij glebæ*, & villaines regardant to the ground, to the intent their seruice might be furnished, and that the countrie being euill, vnwholsome, and otherwise barren, should not be desolate. Others afterwardes found out the waies and meanes, that not the men but the land should be bound and bring with it such bondage and seruice to him that occupieth it, as to ca-

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rie the Lordes dung vnto the fieldes, to plough his ground at certaine daies, sowe, reape, come to his Court, sweare faith vnto him, and in the ende to holde the lande but by copie of the Lords court rolle, and at the will of the Lord. This tenure is called also in our lawe, villaine, bonde, or seruile tenure: yet to consider more deepely all lande, euen that which is called most frée lande, hath a bondage annexed vnto it, not as naturally the lower ground must suffer and receiue the water and filth which falleth from the higher ground, nor such as Iustinian speaketh of *de seruitutibus prædiorum rusticorum & vrbanorum*, but the lande doeth bring a certaine kinde of seruitude to the possessor. For no man holdeth land simply frée in Englande, but he or she that holdeth the Crowne of Englande: all others holde their land in fée, that is vpon a faith or trust, and some seruice to be done to another Lorde of a Manor as his superior, and he againe of an higher Lorde, till it come to the Prince & him that holdeth the Crowne. So that if a man die, and it be found that he hath land which he holdeth, but of whom no man can tell, this is vnderstode to be holden of the Crowne, and in capitie, which is much like to Knights seruice, and draweth vnto it three seruices, homage, ward and mariage: That is, he shall sweare to be his man, and to be true vnto him of whom he holdeth the lande. His sonne who holdeth the land after the death of his father, shall be maried where it pleaseth the Lorde. He that holdeth the lande most frely of a temporall man (for franke almose and franke mariage hath an other cause and nature) holdeth by fealtie onely, which is, he shall sweare to be true to the Lorde, and doe such seruice as appertaineth for the land which he holdeth of the Lord. So that all frée lande in Englande is holden in fée or *feodo*, which is almuch to say as in *fide* or *fiducia*: That is, in trust and confidence, that he shall be true to the

Lorde of whom he holdeth it, pay ſuch rents, doe ſuch ſeruice, and obſerue ſuch conditions as was annexed to the firſt donation. Thus all ſauing the Prince be not *veri domini*, but rather *fiduciarij domini*, & *poſſeſſores*: This is a more likely interpretation than that which Litleton doeth put in his booke, who ſaith that *feodum idem eſt quod hæreditas*, which it doeth betoken in no language. This hapneth many times to them who be of great witte and learning, yet not ſeene in many tongues, or marketh not the deduction of wordes which time doth alter. *Fides* in Latine the Gothes coming into Italie, and corrupting the language, was turned firſt into fede, and at this day in Italie they wil ſay in fide, en fede or ala fe. And ſome vncunning Lawyers that would make a newe barbarous latine worde to betoken lande giuen *in fidem*, or as the Italian ſaith in fede, or fe, made it in feudum or feodum. The nature of the worde appeareth more euident in thoſe which we call to fef, feoff or feoffees, the one be *fiduciarij poſſeſſores*, or *fidei commiſſarij*, the other is, *dare in fiduciam*, or *fidei commiſſum*, or more latinely, *fides committere*. The ſame Litleton was as much deceiued in withernam, & diuerſe other olde wordes. This withernam he interpreteth *vetitum namium*, in what language I knowe not: whereas in trueth it is in plaine Dutche and in our olde Saxon language, wyther nempt, *alterum accipere*, *iterum rapere*, a worde that betokeneth that which in barbarous Latine is called *repreſalia*, when one taking of me a diſtreſſe, which in Latine is called *pignus*, or any other thing, and carying it away out of the iuriſdiction wherein I dwell, I take by order of him that hath iuriſdiction, another of him againe or of ſome other of that iuriſdiction, and doe bring it into the iuriſdiction wherein I dwell, that by equall wrong I may come to haue equall right. The manner of *repreſalia*, and that we call withernam, is not alloge-

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Litleton did not interpret the word *feodi ſimplex*, but rather define or deſcribe the nature therof.

Litleton ſeene in the tongues as Sir Thomas Smith was in Litleton.

ther one: But the nature of them both is as I haue described, and the proper signification of the words doe not much differ. But to returne thither where we did digresse: ye see that where the persons be free, and the bodies at full libertie and *maxime ingenui*, yet by annexing a condition to the lande, there is meanes to bring the owners and possessors thereof into a certaine seruitude or rather libertinitie: That the tenaunts beside paying the rent accustomed, shal owe to the Lord a certaine faith, duetie, trust, obedience, and (as we terme it) certaine seruice as *libertus*, or *cliens patrono*: which because it doeth not consist in the persons, for the respect in them doeth not make them bonde, but in the lande and occupation thereof, it is more properly expressed in calling the one tenaunt, the other Lorde of the fee, than either *libertus* or *cliens* can doe the one, or *patronus* the other: for these wordes touch rather the persons, and the office and duetie betweene them, than the possessions. But in our case leauing the possession and lande, all the obligation of seruitude and seruice is gone.

An other kinde of seruitude or bandage is vsed in Englande for the necessitie thereof, which is called apprenticehode. But this is onely by couenant, and for a time, and during the time it is *vera seruitus*. For whatsoeuer the apprentice getteth of his owne labour, or of his maisters occupation or stocke, hee getteth to him whose apprentice he is, he must not lie forth of his maisters doores, he must not occupie anie stocke of his owne, nor marry without his maisters licence, and he must doe all seruile offices about the house, and be obedient to all his maisters commaundementes, and shall suffer such correction as his maister shall thinke meete, and is at his maisters cloathing and nourishing, his maister being bounde onely to this which I haue saide, and to teache him his occupation, and for that he

serueth, some for vij. or viij. yeres, some ix. or x. yeres, as the masters and the friendes of the young man shall thinke mœte or carragrœ: altogether (as Polidore hath noted) *quasi pro emptitio seruo*: neuerthelesse that neither was the cause of the name apprentice, neither yet doth the worde betoken that which Polydore supposeth, but it is a Frenche worde, and betokeneth a learner or scholer. Apprendre in French is to learne, and apprentise is as much to say in Frenche (of which tongue we borowed this worde and many more other) as *discipulus* in Latine: likewise he to whome he is bound, is not called his Lorde but his master, as ye would say his teacher. And the pactions agréed vpon, be put in writing, signed and sealed by the parties, and registred for more assurance: without being such an apprentice in London, and seruing out such a seruitude in the same Citie for the number of yeares agréed vpon, by order of the Citie amongest them, no man being neuer so much borne in London, and of parentes londoners is admitted to be a Citizen or frée man of London: the like is vsed in other great Cities of Englande. Besides apprentises, others be hired for wages, and be called seruauntes or seruing men and women throughout the whole Realme, which be not in such bondage as apprentises, but serue for the time for daily ministrie, as *serui* and *ancillæ* did in the time of gentilitie, and be for other matters in libertie as full frée men and women.

The sonnes of freemen of London are also free by birth, according to the custome.

But all seruaunts, labourers and others not maryed, must serue by the yere: and if he be in couenaunt, he may not depart out of his seruice without his masters licence, and he must giue his master warning that he will depart one quarter of a yeare before the terme of the yeare expireth, or else he shalbe compelled to serue out an other yeare. And if any young man vnmaried be without seruice, he shalbe compelled to get him a ma-

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ſter whom he muſt ſerue for that yere, or elſe he ſhalbe puniſhed with ſtockes and whipping as an idle vagabond. And if any man maried or vnmaried, not hauing rent or liuing ſufficient to maintaine himſelfe, doe liue ſo idlely, he is enquired of, and ſometime ſent to the gaole, ſometime otherwiſe puniſhed as a ſturdie vagabond: ſo much our policie doth abhorre idlenelſe. This is one of the chiefe charges of the Iuſtices of peace in euerie Shire. It is taken for vngentlenelſe and diſhonour, and a ſhewe of enmitie, if any gentleman doe take an other gentlemans ſeruaunt (although his maſter hath put him away) without ſome certificate from his maſter either by worde or writing, that he hath diſcharged him of his ſeruice. That which is ſpoken of men ſeruauntes, the ſame is alſo ſpoken of women ſeruauntes. So that all youth that hath not ſufficient reuenues to maintaine it ſelfe, muſt nedes with vs ſerue, and that after an order as I haue written. Thus neceſſitie and want of bondmen hath made men to vſe free men as bondmen to all ſeruile ſeruices: but yet more liberally and freely, and with a more equalitie and moderation, than in time of gentilitie ſlaues and bondemen were wont to be vſed, as I haue ſaide before. This firſt and latter faſhion of temporall ſeruitude, and vpon paction is vſed in ſuch countryes, as haue left off the olde accuſtomed maner of ſeruaunts, ſlaues, bondmen and bondwomen, which was in vſe before they had receiued the Chriſtian faith. Some after one ſort, and ſome either more or leſſe rigorouſlie, according as the nature of the people is enclined, or hath deuiſed amongeſt themſelues for the neceſſitie of ſeruice.

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Of the Court which is Spirituall or Ecclesiasticall, and in the booke of Law, Court Christian, or *Curia Christianitatis*.

Chap. 9.

The Archbishops and Bishops haue a certaine peculiar iurisdiction vnto them especially in foure maner of causes: Testaments and legations, Tythes and mortuaries, mariage and adulterie or fornication, and also of such thinges as appertaine to orders amongest themselues and matters concerning religion. For as it doeth appeare, our auncestors hauing the common wealth before ordeined & set in frame, when they did agrée to receiue the true and Christian religion, that which was established before, and concerned erterne policie (which their Apostles, Doctors and Preachers did allowe) they helde and kept still with that which they brought in of newe. And those thinges in keeping whereof they made conscience, they committed to them to be ordered and gouerned as such thinges, as of which they had no skill, as to men in whom for the holinesse of their life and good conscience, they had a great and sure confidence. So these matters be ordered in their Courts, and after the fashion and maner of the lawe ciuill or rather common by citation, libel, *contestationem litis*, examination of witnesses priuilie, by exceptions, replications apart and in writing, allegations, matters by sentences giuen in writing, by appellations from one to an other as well *a grauamine* as *a sententia definitiua*, and so they haue other names, as Proctor, Aduocates, Assessors, Ordinaries, and Commissaries, &c. farre from the manner of our order in the common lawe of Englande, and from that fashion which I haue shewed you before. Where-

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fore if I say the testament is false and forged, I must sue in the spirituall lawe, so also if I demaunde a legacie: but if I sue the executor or administrator which is he in our lawe, who is in the ciuill lawe *hæres* or *bonorũ mobilium possessor ab intestato*) for a debt which the dead ought me, I must sue in the temporall court. These two courtes the temporall and the spirituall be so diuided, that whosoeuer sueth for any thing to Rome or in any spirituall court for that cause or action which may be pleaded in the temporall court of the Realme, by an olde lawe of Englande he falleth into a *præmunire*, that is hee forfeiteth all his goods to the Prince, and his bodie to remaine in prison during the Princes pleasure: and not that onely, but the Iudge, the scribe, the procurer and assessor which receiueth and doth maintaine that vsurped pleading doeth incur the same daunger. Whether the word *præmunire* doeth betoken that the authoritie & iurisdiction of the realme is prouided for before, and defended by that lawe, and therefore it hath that name *præmunire* or *præmuniri*, or because that by that lawe such an attemture hath had warning giuen before to him of the daunger into which he falleth by such attempt, and then *præmunire* is barbarously written for *præmonere*, *præmoneri*, (as some men haue helde opinion) I will not define, the effect is as I haue declared: and the lawe was first made in king Richarde the secondes time, and is the remedie which is vsed when the spirituall iurisdiction will goe about to encroch any thing vpon the temporall courts, Because this court or forme which is called *curia christianitatis*, is yet taken as appeareth for an externe and forren court, and differeth from the policie and manner of gouernement of the Realme, and is an other court (as appeareth by the act and writ of *præmunire*) than *curia regis aut reginæ*: Yet at this present this court as well as others hath her force, power, authoritie, rule

Which ought to be tried in the temporall court.

rule and iuriſdiction, from the royall maieſtie and the crowne of Englande: from no other forren potentate or power vnder God, which being granted (as indeede it is true) it may nowe appeare by ſome reaſon that the firſt ſtatute of *præmunire* whereof I haue ſpoken, hath nowe no place in Englande, ſeeing there is no pleading *alibi quam in curia regis ac regina*.

I haue declared ſummarily as it were in a chart or mappe, or as Ariſtotle termeth it *ὑπογραφὴν* the forme and manner of the gouernement of Englande, and the policie thereof, and ſette before your eyes the principall pointes wherein it doeth differ from the policie or gouernement at this time vſed in Fraunce, Italie, Spaine, Germanie and all other countries, which doe followe the ciuill Lawe of the Romanes compiled by Iuſtinian into his pandects and code: not in that ſort as Plato made his common wealth, or Zenophon his kingdome of Perſia, nor as Syr Thomas More his *Vtopia* being feigned common wealths, ſuch as neuer was nor neuer ſhall be, vaine imaginations, phantaſies of Philoſophers to occupie the time and to exerciſe their wittes: but ſo as Englande ſtandeth and is gouerned at this day the xxviij of March *Anno* 1565. in the vij yeare of the raigne and adminiſtration thereof by the moſt vertuous and noble Quéene Elizabeth, daughter to King Henrie the eight, and in the one & fiftieth yeare of mine age, when I was ambaſſador for her maieſtie in the court of Fraunce, the ſcepter whereof at that time the noble Prince and of great hope Charles Maximilian did holde, hauing then raigned iiij yeares. So that whether I writ true or not, it is eaſie to be ſéene with eies (as a man would ſay) and felt with handes. Wherefore this being as a proiect or table of a common wealth truely laide before you, not fained by putting a caſe: let vs compare it with common wealthes, which be at this day in *eſſe*, or doe remaine deſcribed in true hiſtories,

hiſtories, eſpecially in ſuch points wherein the one diſſereth from the other, to ſée who hath taken the righter, truer, and more commodious way to gouerne the people aſwell in warre as in peace. This will be no illiberall occupation for him that is a Philoſopher and hath a delight in diſputing, nor vnprofitable for him who hath to doe & hath good will to ſerue the Prince and the common wealth in giuing counſell for the better adminiſtration thereof.

Thomas Smyth.

FINIS.